

February 10, 2009



TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner, Vice President

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Valerie Ervin

Councilmember Michael Knapp

Councilmember Duchy Trachtenberg

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1 COUNCIL PRESIDENT ANDREWS:

2 Good morning, everybody. Thank you for your patience. We are going to begin this
3 Council session with a tribute to our late colleague Don Praisner, and the order of the
4 program will be that we are going to start with a video tribute that was prepared by Council
5 staff that we will be showing up here shortly, and then the County Executive will make
6 remarks, I'll make remarks, Councilmembers will make remarks, and then I will ask the
7 family to conclude the program, this tribute to Don Praisner. And so, thank you all for
8 being here. With that, I will urge our staff to line up the tribute, which should be coming up
9 shortly on the screen.

10
11 SUSAN KENEDY:

12 Don Praisner served on the Montgomery County Council just seven short months after
13 winning a special election to fill the vacancy left by the sudden death of his wife Marilyn.
14 Sadly, almost a year to the day, he passed away following surgery for colon cancer.
15 Councilmember Praisner represented District 4 in the eastern part of the county, where he
16 lived for most of his life. After graduating from Blair High School, he attended the first
17 class of Montgomery College and graduated from the University of Maryland. He worked
18 at the CIA for 30 years as an analyst, manager, and recruiter. It's there he met his future
19 wife Marilyn, who served on the County Council for 17 years. After she died following
20 heart surgery last year, Mr. Praisner reluctantly ran for her seat at the urging of friends
21 and colleagues.

22
23 COUNCILMEMBER PRAISNER:

24 When my wife passed away, we looked for someone to take her place, and we
25 approached a number of former officials, and no one indicated a desire to run for the
26 office. And I got a phone call from Ike Leggett, our County Executive, and he said, "How
27 about you, Don?" And I said, "Don't ask me, Ike." But, uh...we finally decided that there
28 was no one running on the Democratic side that we thought was electable and who had
29 the type of interests that my wife had, and that I shared a lot of her interests, a lot of her
30 concerns, and reluctantly, I said, "OK, I'll run," and went to the campaign and was
31 fortunate enough to win the primary, and then the voters elected me to the office.

32
33 SUSAN KENEDY:

34 Mr. Praisner was known for his quiet, unassuming demeanor. Councilmembers who
35 worked closely with him say he always remained steadfast in his dedication as a public
36 servant.

37
38 COUNCIL PRESIDENT ANDREWS:

39 Well, Don was a quiet but strong voice for his constituents and for people who were
40 disadvantaged. He had a passion for people who need attention because they're --they
41 have disabilities. He was the former president of CSI, which works with people with severe

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1 disabilities. He looked out very carefully for his constituents, as did Marilyn Praisner, and
2 he was a strong voice for fiscal responsibility and felt that government needed to be clear
3 about what it did and look out for those who couldn't help themselves.

4
5 COUNCILMEMBER ELRICH:

6 I really enjoyed working with Don. He was very levelheaded. He was very analytical. He
7 didn't talk to hear the sound of his own voice. If he had something to say, he said it, and
8 he said it succinctly, and I found it very easy to work with him.

9
10 COUNCILMEMBER TRACHTENBERG:

11 Very much driven by common sense, a real sense of purpose around family and
12 community. And those were really things--the attributes that were very true of Marilyn, as
13 well. So I think you could certainly say they were a duo, and he was probably the perfect
14 person to come here to try to extend her work and preserve her legacy. He was hard-
15 working. He brought a certain level of candor to most conversations and certainly always
16 humor as well, and that's something, sitting right next to him, I saw firsthand. And believe
17 me, there were times when that was really a very important ingredient.

18
19 SUSAN KENEDY:

20 Councilmember Praisner was also an active member of his community before coming to
21 the Council. He served as Vice President of the Calverton Citizens Association, as well as
22 a Democratic precinct chair. He was passionate about golf and served on the board of
23 The First Tee of Montgomery County, an organization that introduces children to golf at an
24 early age. He came out of retirement to join the County Council and served on the Public
25 Safety and Management and Fiscal Policy committees. He chose his words carefully, and
26 his colleagues say his sense of humor kept them grounded.

27
28 COUNCILMEMBER ELRICH:

29 I really like this blue paisley shirt I have, and I wore it one day, and he told me he would
30 not sit next to me again if I wore that shirt --that it was too painful on his eyes. And he
31 would make little comments, side comments, about our discussions sometimes that
32 indicated his amusement at some of what goes on up on the dais.

33
34 SUSAN KENEDY:

35 Mr. Praisner had made it clear he was here to finish out his wife's term and would not
36 seek reelection. He was asked recently about how he would like to be remembered after
37 he left office.

38
39 COUNCILMEMBER PRAISNER:

40 I'd like to have people say, "He did a good job." I worry about my grandchildren, what they
41 can expect out of life, and I guess I'm somewhat of a pessimist in that regard in that I don't

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1 see life getting better--if anything, just more trials and tribulations. Jobs are being more
2 difficult. You have to be better educated. Housing--you know, where are they going to
3 live? How are they going to get around? I'd like to believe that they'll have the same
4 opportunities I had to not only see Montgomery County but go out and see what the rest
5 of the world looks like. But in terms of legacy, just that I did the best I could.

6
7 COUNCILMEMBER TRACHTENBERG:

8 Marilyn and Don were really driven by family values and with the understanding that
9 community is really preserved and improved upon when there's a strong relationship
10 between community and local government. And in other words, they saw the significant
11 role that public servants can really play in the lives of everyday citizens. And Marilyn
12 spoke to that, and Don did as well, and I think if there's one thing that we're all missing
13 besides that wild sense of humor, it's exactly that core principle--that he really did
14 understand that what we're doing is really to improve the lives of everyone that lives here
15 and works here and plays here in Montgomery County.

16
17 SUSAN KENEDY:

18 The loss of Don Praisner now leaves even bigger shoes to fill in District 4. But there is no
19 question the Praisner legacy will live on in Montgomery County for many years to come.

20
21 COUNCIL PRESIDENT ANDREWS:

22 That was a wonderful tribute done by our staff, and I want to applaud their great work on
23 that. I want to recognize that Don's daughter Alison is here today, Alison Klumpp, with her
24 husband Lee and their children Kaitlin and Rachel. And we--our sympathies, our
25 condolences, and our thanks to the contributions that you made to the work that Don and
26 Marilyn have contributed to this county over many years. I'm now going to ask our County
27 Executive, who is a longtime friend of both Don and Marilyn Praisner, to make remarks.

28
29 COUNTY EXECUTIVE LEGGETT:

30 Thank you very much. I'm almost tempted to raise my hand and vote for something, sitting
31 here. This is a difficult moment and one that none of us anticipated, and we've known
32 Don, with his humor, and I'd have to say that I agree with him as it relates to Marc's attire,
33 shirt.

34
35 COUNCIL PRESIDENT ANDREWS:

36 But he's gotten better.

37
38 COUNTY EXECUTIVE LEGGETT:

39 He's gotten better.

40
41 COUNCILMEMBER FLOREEN:



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1 He has.

2
3 COUNTY EXECUTIVE LEGGETT:

4 He can only get better. Let me give you a side of Don that sometimes we tend to forget.
5 Don and I had a real dispute at an earlier stage, when the Country, along Route 29, at
6 what is now called the Site 2 site, actually had a real sludge processing operation in the
7 county. And if on occasion you drove down Route 29, you would smell it, and the smell
8 would drift over 29 through Calverton and throughout the community. And I was on the
9 committee that would oversee WSSC, and Don wanted that facility moved. And the
10 laughter, the smiles, the conciliatory Don that we all know, and the leader of the
11 community was anything but laughter as it related to that facility. He was determined. He
12 was articulate. He devised a plan that helped us to ultimately remove that site from the
13 community. And he did so in the true spirit of what I think a citizen would actively want --
14 someone who engaged the elected officials at that point in time and someone who cared
15 about the community and was passionate about it and fought for it. Yes, he was a person
16 of great intelligence and great humor, but he was passionate about the community and
17 about the district in which we both lived. We oftentimes cite the accomplishments of
18 Marilyn, but those accomplishments would not have been possible without Don's
19 leadership and guidance and support. I could hear so many times, Marilyn said, "Let me
20 talk to Don about this," or, "Let me get back to you," because not only was he the
21 sounding board, but he was a person that really provided a great deal of guidance to her.
22 It is challenging, at times, for us to find a person who at his age and who had an
23 opportunity simply to sit back, watch what would happen, enjoy his family, to go out and to
24 get on the golf course with his grandchild, to leave that to come to the challenges that we
25 see here on this Council, the many difficulties that we all have to deal with, but he was
26 willing to make that sacrifice because of his love of this community, his love for people. I
27 will miss that, and it is hard to replace a person who is so genuine, so committed to this
28 county. He oftentimes would have a smile on his face, but he had a sincerity and a
29 compassion in his heart and an intellect and a keen sense of what was right and wrong.
30 We face some really difficult financial challenges this year, and his loss of leadership, his
31 push and zeal for fiscal responsibility, is something that we will miss. But we can best
32 honor Don by recognizing his commitment to this county and to bringing all of us together
33 to deal with the great challenges we have. It is wonderful for us to have this tribute today,
34 but it would be more lasting for this county if we recognize the contribution that he made
35 and his willingness to commit himself to bringing all of us together to do what is right for
36 Montgomery County. That is the legacy, and that is the contribution that I think he has
37 provided for all of us, and I think it's a worthy example for us to follow. Thank you.

38
39 COUNCIL PRESIDENT ANDREWS:

40 Thank you, Ike. It's good to have you back here. I had the great pleasure of serving with
41 our County Executive on the County Council during my first term, and it was a real

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1 learning experience and a pleasure to do so. We have--the past year, we've had a lot of
2 empty chairs here at the Council and a table that's not full, and it has been an
3 extraordinarily tough year for the Council, but more difficult still for the family and for the
4 staff of both Marilyn and Don. We know that this is a time that it's hard for us to
5 understand what they have gone through, and our job is to provide as much support as
6 we can and to be thankful to the family and to Don's and Marilyn's staff, who are the same
7 and who are carrying on during this period to help ensure that the people in District 4
8 continue to get the great service that they became accustomed to over the past 18 years,
9 19 years of service by the Praisners. Joy Nurmi, Claire Iseli, Sherry Kinikin, Pat Brennan,
10 and Jackie Hawksford (?????all 5 names) are among the finest people in County
11 government, and I know that they have gone through a great deal, along with Don's
12 immediate family, and we thank them for their dedication and great service to the people
13 of District 4. Don, as the County Executive said, and Marilyn--it's hard not to think of them
14 as a team. They really were a team over many decades. They changed roles, and Don
15 picked up the torch when Marilyn left us. Don carried it further along the path, and now it
16 will be up to a new person to carry that torch further, but I can assure you that in the
17 meantime, while the Council will always keep Marilyn and Don in our hearts, we will also
18 be sure to keep the people of District 4 in our mind as we go through these coming weeks
19 and months without a representative from that area of the county. And I know that the
20 people of District 4 will continue to call on us to look out for their concerns, as they will the
21 staff. Don served not only his country with great distinction, over his many years in the
22 Central Intelligence Agency, where he met Marilyn, but also, of course, his community for
23 decades as a civic leader and his county in many roles, including in his last role as an
24 elected official. He led an exemplary life, one of true service to the people, to his
25 neighbors and to the larger community, and he made a contribution to this Council in his
26 focus on the practical aspects of government, the fiscal issues, looking out for people who
27 can't look out well for themselves. Don was president of CHI, which looks out for people
28 with severe disabilities, and at a time in his life when Don, I know, would have preferred to
29 stay retired and spend more time with his children and grandchildren, he responded to the
30 call of service, and we all must recognize the dedication that took and thank him, and
31 thank his family for allowing him to do that and for the sacrifices that they have made over
32 the many years of having Don gone and Marilyn gone more than they would have been
33 otherwise. It is --it is important for the Council to continue on with the public's business, as
34 Don would want us to do, and yet we appropriately will remember his many contributions,
35 and we will seek to ensure that his legacy, the Praisner legacy of good government, lives
36 on in this county for a very long time. And I thank everybody for the support that they've
37 given to the Council in this difficult time, and I especially want to say that the Council will
38 do all it can to support the family and the staff as we go forward. With that, I'm going to
39 call on Councilmembers as I see their lights, and the first light I see is Councilmember
40 Leventhal, and then I'm going to go to Councilmember Trachtenberg.

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1 COUNCILMEMBER LEVENTHAL:

2 Thank you, Mr. President. Because of my upbringing, I have a healthy skepticism about
3 the concepts of heaven and an afterlife. But when I say that Don was called home by a
4 higher power several days ago, I know it's true, and I know who that higher power was. It
5 was Marilyn. She had been up there a year already, and she was impatient waiting for
6 him. Those of us who served with her when she was Council president know that when
7 she rang that bell, you had to get moving. I've been active in the Montgomery County
8 Democratic party for 23 years, and I served with Marilyn on this body for five years, and I
9 felt I knew Marilyn very well, but Don, as others have said, was a quiet, unassuming guy.
10 My memories of him are mostly as Marilyn's husband. And when you think about a
11 marriage as solid and rich and mutually rewarding as theirs, that's not a bad way to be
12 remembered. Few people can appreciate the impact that this job can have on your family
13 and your personal life. Don was the trustworthy friend and supporter at home for so many
14 years who enabled Marilyn to be the outstanding public servant that she was. And when
15 she left us, Don felt the greatest loyalty to her would be to run for and serve in her seat.
16 Don's time here on the County Council was too short, and although I never got the chance
17 to know him well, the evidence of the kind of person he was can be seen in the
18 outstanding daughters and son he raised and the adorable grandchildren who loved him.
19 A legacy of service--that's what the Praisers bequeath to all of us. From Don's service in
20 the Army and the CIA to his service to his neighborhood association, the Democratic
21 Party, his church, CHI, Inc., First Tee, and finally, the short time he spent here on this
22 dais, he served his country and this county admirably. As chairman of your Health
23 Committee, I just want to close with this thought. Marilyn and Don put service to the
24 community first, even perhaps ahead of their own well-being. Let's work hard like they did
25 and honor their memory with our service every day, but, friends, let's take care of
26 ourselves. See your doctor. Get every routine exam that's appropriate for your age,
27 condition, and gender. Get some exercise. Get some rest. Now that Marilyn and Don are
28 gone, this community needs all of us to stay healthy.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Thank you, Councilmember Leventhal. Councilmember Trachtenberg.

32
33 COUNCILMEMBER TRACHTENBERG:

34 Thank you, President Andrews. It's with great sadness that I offer my remarks this
35 morning. Last year, at Marilyn's passing, I think some of you recall, I was very brief in my
36 public statements. But I feel after having lost a Praisner to my right and now Don to my
37 left, it's impossible to be brief today, but hopefully, I'll bring some comfort to today's
38 conversation. I feel an obligation to do that because that's what my good friend Don
39 Praisner brought to this body. At a tremendous moment of sorrow, he selflessly offered us
40 his strength, his wisdom, and steady hand. And I don't think Don ever realized how
41 important that was to all of us who are gathered here today. I personally felt an incredible

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1 sense of inner peace and resolve when Don arrived at the Council building the end of last
2 May. Don also provided us with a regular dose of reality, marked by wit and candor.
3 Sitting next to him on the dais, I can assure you that his thoughts shared in whispers to
4 me were sometimes uncensored, but they were always on point. Don called things like he
5 saw them, and as I recalled last week, he always used humor to keep us grounded. This
6 past December, Don had really enjoyed himself during our holiday skit, and his
7 performance and costume confirmed that for sure. He and I were portraying the Little
8 People in the Council's rendition of "Willy Wonka," and as I appeared in the hall in my
9 costume, sporting my personalized pink Mickey Mouse ears and campy bright pink
10 stilettos, Don remarked that I looked ridiculous, at which point I retorted that Don, in a
11 large red bow tie and an Elvis wig, looked just as bizarre. But Don, never losing a beat,
12 opined that at least he could walk, as it was clear I'd break my ankles if I walked any
13 distance in my patent leather pumps. Don quipped, "You must be careful with the risks
14 that you take in life." And in his book, moderation was important, but going out on a limb
15 and exploring adventure were acceptable, provided you were prepared to deal with the
16 consequences. Moments later, Don and I were dragging and lifting a very large cutout of
17 our County Executive across the stage at pivotal moments in the production. Towards the
18 end, we were charged at returning the stand-up Ike behind the stage door, and as we
19 approached the door, Don, in a very dry tone, remarked, "He's not heavy. He's my
20 brother." At which point, I promptly reminded my colleague, "Keep reminding yourself of
21 that when the budget comes in March." We both enjoyed a good belly laugh, but that's
22 how we interacted regularly. We respected the gravity of our Council roles but understood
23 that it was human nature that made our political conversations and decisions very
24 interesting, not the differences of opinion. Over this past week, I have continued to talk
25 about the Praisner tradition of public service and how Don and Marilyn understood the
26 important connection between community and local government, specifically public
27 officials. Their legacy of fiscal responsibility and unwavering principle will endure in this
28 body and in Council District 4, that they both ably represented with such love and an
29 unparalleled spirit of generosity. Don and Marilyn took great pride in their community and
30 especially in their children and grandchildren--Kaitlin, Rachel, Camden, and Madison.
31 They were guided in their political mission by the anchor of their family. Last Wednesday, I
32 heard both Michael and Lee speak of Don as a loving and generous man, but I want to
33 share with his family today-- in particular, Lee--that when Don spoke of all of his sons,
34 including you, he used adjectives like compassionate, hard-working, fair-minded, and
35 those are words that describe the essence of the man, Donald Praisner, as well. Last
36 November, as we were fast approaching the Thanksgiving holiday, I confided in Don that
37 my son would soon be transferred to a Maryland state hospital from a New York hospital
38 setting, and right up here on this dais, with Don sitting in that chair, we got into a
39 conversation on how I coped routinely with my son's inability to participate fully in any
40 holiday celebration. And halfway through that conversation, I realized Don's own struggle
41 on how to cope with the impending holiday, as it was just a year ago that Marilyn's final

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1 journey had begun. So, in my Jewish mother fashion, I described to Don how little things
2 became the important indicators, how a favorite dessert and the satisfaction that I derive
3 in preparing it for my son help, and how the ultimate pleasure he experiences makes it
4 worthwhile. I was trying to tell Don that he could enjoy some level of comfort during the
5 holiday by the mere interaction with his children and grandchildren, and when we resumed
6 Council's schedule after Thanksgiving, I asked Don how the holiday had been. He said
7 little, but he grabbed my hand and replied, "OK, and the family were great." I went on in
8 great detail about what I had cooked, describing Wally's first care package, and he
9 reminded me that I shouldn't be stingy with any leftovers, especially the stuffed cabbage. I
10 will miss my friend terribly, but I know his spirit will be perpetuated by all of us who loved
11 him. And in closing, let us take comfort and direction from the words of scripture--"Two are
12 better than one because they have a good reward for their toil, for if they fall, one will lift
13 up his fellow. But woe to him who is alone when he falls and has not another to lift him
14 up." Again, "If two lie together, they keep warm, but how can one keep warm alone?" And,
15 "Though a man might prevail against one who is alone, two will withstand him. A threefold
16 cord is not quickly broken."

17
18 COUNCIL PRESIDENT ANDREWS:

19 Thank you, Councilmember Trachtenberg. Councilmember Floreen.
20

21 COUNCILMEMBER FLOREEN:

22 Thank you. First of all, again I'd like to offer my condolences to Don's family and his close
23 friends and his staff. Having lost Marilyn just such a short time ago, it's really all the more
24 difficult to have this session today and to say goodbye to Don, who really was a generous
25 man who did approach public service with the ultimate sincerity. Don didn't run for this
26 seat because he needed a job or a paycheck, nor did he do it for political ambition. He did
27 it because he thought it was the right thing to do, and really, running for the County
28 Council was inextricable from the rest of his life--from his commitment to the community
29 and to his passionate belief in Marilyn's legacy. I didn't know Don that well, but what I saw
30 in Don was a man--he didn't have any artifice. He didn't look at this job as a question of
31 positioning himself. He didn't put his finger in the wind and see where people are going.
32 He really said what he thought, and he called things as he saw them, and I think that was
33 a great gift to us and to the community. He did bring to the job a certain joie de vivre, and
34 I'm entertained by the conversation about Marc's shirt, which we haven't seen since. Right
35 after Don was sworn in, I had the opportunity to attend the CHI Center's 60th anniversary
36 celebration along with Don. I think Ike was there, too. And I --here was the Honorable Mr.
37 Donald E. Praisner wearing this bright yellow shirt with margarita glasses embroidered on
38 it. Hold on to that shirt. I looked at Don, and I thought, "Marilyn would never let you wear
39 this shirt." But Don wore it, and I admired it, and I thought, "This is a guy I'd enjoy
40 spending time with." This is a man who chose his clothes because he liked them, and it
41 said a lot, I thought, about Don. Really, he wasn't showing disrespect to CHI. He had a

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1 long history with them, and he dedicated just countless hours to the organization, helping
2 people with disabilities, but his festive attire was really a reflection of the fact that Don's
3 work was part of his life, and his life was part of his work, and I think that said a lot about
4 him. I wish I had had more time with Don, but I do feel privileged for the time we've spent
5 together here. He was a nice guy. My heart goes out to all of you. I know you'll miss him
6 terribly, and we will, too.

7
8 COUNCIL PRESIDENT ANDREWS:

9 Thank you, Councilmember Floreen. Councilmember Elrich.

10
11 COUNCILMEMBER ELRICH:

12 I feel compelled to defend my dress style. And I will note that I thought--I thought Don
13 brought the same relaxed approach to attire that I bring, and frankly, there are many
14 people who walk around the Executive Building who tell me all the time they wish they
15 could chuck their ties and their jackets. And if only I could pass some regulation making it
16 so, I would do so.

17
18 COUNCILMEMBER KNAPP:

19 Just not for a paisley shirt.

20
21 COUNCILMEMBER ELRICH:

22 Wait till I put a tie with it. I guess this is, you know, it's a really sad occasion, and I've
23 thought a lot about, you know, this over the last week or so. I knew Don in a couple of
24 different aspects. As I think most of you know, I have two Down's syndrome foster kids.
25 My foster kids, early on, did a stint at Centers for the Handicapped-- CHI--up in--off of
26 New Hampshire Avenue. And so I'd gone to events out there and had originally met Don--
27 his wife was there, but I met Don as, you know, introduced--but not introduced as her
28 husband, but introduced through the role that he played at CHI. And I really appreciated
29 that, and we were able to talk with him and with, you know, other folks, who worked there
30 about what it's like to work with handicapped people and what the opportunities are that
31 you try to present and how difficult it is and challenging it is, and also how rewarding it is.
32 And that was my first totally non-political encounter with Don. I didn't know he was in the
33 CIA originally, but I knew Marilyn was, and this is another interesting thing to me. I mean,
34 we come to things through different paths. I can assure you that in my political path, I
35 didn't encounter many CIA agents.

36
37 COUNTY EXECUTIVE LEGGETT:

38 No, you just--not knowing. You didn't know them.

39
40 COUNCILMEMBER ELRICH:

41 Actually, yes.

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1
2 COUNCIL VICE PRESIDENT BERLINER:

3 They knew you, though.
4

5 COUNCILMEMBER ELRICH:

6 This-- this is true. I can't say from the FBI file that I can confirm any CIA links, but there is
7 some stuff there. What I was intrigued by--I was talking with Don and Marilyn about
8 politics and about the area in which they worked and surprised, in large measure, about
9 how much we actually agreed in how we looked at things and the things they saw and had
10 really common perspectives. And I was--it was really interesting. Life is full of surprises,
11 and I think it reaffirms the idea that, you know, people are more the same than they are
12 different and that, you know, you can focus on your differences and lose sight of the fact
13 that, at the end of the day, most of us, whether you're, you know, Democrat or
14 Republican, you know, far left or conservative--and I may leave out some other people,
15 but, you know, but in general, we all want the same things for our community and for our
16 kids, you know, and how we grow up, and ideology kind of breaks down when you get
17 down to the neighborhood level--at least, I think it does most of the time. And I really
18 appreciated, you know, the time I had working with both Marilyn and with Don. And I also
19 came to appreciate the relationship with the family. Again, you know, I had known Marilyn
20 as a political person and then knew Don as a political person, but in the past year, it's
21 really evident the great love and affection that everybody shared in the family and how
22 important you were to each other, and that means a lot, and I really valued it, and it was
23 just comforting to see that. I'm sure it was a great comfort to Don and that he was a great
24 comfort to you. And so I think, you know, it was something that--it certainly moved me. I
25 thought Don's time here was too short. I thought he was enjoying what he was doing. I
26 was encouraging him to think about four more years. I confess that I thought, you know,
27 he was growing into the job and that, you know, perhaps he would, you know--it provided
28 meaning, and he was engaged, and he was interested, and why give it up? You know, it's
29 a great thing to do if you have the opportunity to do it. And so I occasionally would kind of
30 nudge him and say, "Come on. Four more years." I never got a--I never got a yes as an
31 answer to that, but it didn't stop me from raising the issue. All in all, I thought, you know,
32 Don's presence here was really constructive. He was a great person to talk to. He was
33 easy to talk to. Didn't always agree with me. I don't think he always agreed with anybody,
34 and I--he didn't always agree with Marilyn, and who knows what the consequences were
35 for that. Consequences here are far more minor, I think. But I really appreciated his
36 thoughtfulness on things and his willingness to engage. I think he was ably aided by his
37 staff. I think, you know, Phil's comments about the value of Marilyn's and Don's staff, you
38 know, cannot be understated. You're a great group of folks. You really contributed. You
39 make it possible, I think, for a person to be an effective legislator. We--you know, we all
40 rely on our staffs, you know, to be the eyes and ears and help evaluate the kind of
41 questions that we're--have to make decisions about, and I think you all have been



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1 exceptional, and I really appreciate the work you did. So I think we're all going to miss
2 Don. I miss him already. I wish we weren't faced with another election. It would have been
3 much nicer to have gone through this term with nine people, knowing who we all are and
4 having a chance to work through these things, and I think that it's a loss to the County and
5 a loss, certainly, to this Council. And my thoughts are with all of you, so...

6
7 COUNCIL PRESIDENT ANDREWS:

8 Thank you, Councilmember Elrich. Councilmember Knapp.
9

10 COUNCILMEMBER KNAPP:

11 Thank you, Mr. President. When I served as Council President last year, it was my honor
12 to formally introduce Don to this Council and seat him as our ninth member. Don came to
13 the Council at a time when we were doing a lot following the passage of the budget, and
14 because of that, he didn't have a lot of time to learn the ropes. He didn't have time to
15 finesse personalities or ease into the job. He had to hit the ground running, and he did,
16 and he did it fast. We shouldn't have been surprised. Obviously, as we've all heard here
17 today and previously, Don spent a lifetime in public service, whether it was his career with
18 the CIA, his position in civic groups and HOAs, or his work on behalf of the disabled.
19 Service was in Don's blood, and he gave his all to his country, our county, his community,
20 and this Council. When Don first arrived at the County Council, he was here, as he told
21 us, to fulfill another legacy. For Don, it wasn't just a legacy of service. It was a legacy of
22 love. It was personal, and I think we all agree that Don made good on his promise to his
23 family and to the residents of the district that he represented so ably. My thoughts and
24 sympathies go out to the entire Praisner family and to his staff. Don was a part of our
25 family, too, and we will feel his absence, as well. He will be missed.
26

27 COUNCIL PRESIDENT ANDREWS:

28 Thank you, Councilmember Knapp. Council Vice President Berliner.
29

30 COUNCIL VICE PRESIDENT BERLINER:

31 I wanted to just speak briefly to the family here today and to say that I didn't know your
32 father very well, Alison and Lee, and your grandfather, Kaitlin and Rachel. Here's what I
33 did know. I know he was a good man, and everything I heard at that lovely service on
34 Wednesday just affirmed what I knew from the brief time I had to work with him. And I
35 don't know what better there can be to say about somebody than he was a good man. I
36 know that he asked that he be remembered for somebody who did a good job, and I know
37 he fulfilled that desire. He did a good job. And I know as a dad and as a passionate golfer,
38 that, Rachel, the pleasure he must have gotten from when you beat him is beyond
39 measure-- the pride he must have had and still has. So I just wanted to share those brief
40 thoughts with you and my deepest condolences and sympathy.
41



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1 COUNCIL PRESIDENT ANDREWS:

2 Thank you, Council Vice President Berliner. I now would invite the family to say a few
3 words, if they would like to come up to the dais. Alison, you can either --either side is fine.
4 Just push the button in front. ALISON KLUMPP:

5 Um... I'm sorry. ??????

6
7 COUNCIL PRESIDENT ANDREWS:

8 Take your time. ALISON KLUMPP:

9 I wasn't planning on doing this, um, and, um... unlike my mother and father, I'm not that
10 great at just saying things. I'm always more prepared. But from the family and from myself,
11 I would like to thank you for the support that you've given us--not just in the last few
12 weeks, but in the last year --and for your kind words here today. It's interesting to hear you
13 all say my father had a quiet voice, because when you were in trouble as a kid, it was not
14 a quiet voice. In fact, every time one of you said that, I had to kind of chuckle inside and
15 remember those times of breaking curfew or not doing chores, and definitely did not have
16 a quiet voice from Dad. But my father did care for this county very deeply. A year ago, he
17 said that the only argument he ever won with my mom was where they were going to live
18 when they got married, and it was Montgomery County. He truly cared for Montgomery
19 County, he truly cared for the residents and for the way of life that he thought should
20 people should be allowed to live in Montgomery County. He loved what he did, and while
21 yes, he missed those golf days when he was here instead, this is where he wanted to be.
22 He wanted to be here doing what my mom started and doing what the two of them felt
23 was the right thing to do--taking care of education, taking care of transportation, and all
24 the other many facets that you all do. And that's why he did it. He did it because he cared,
25 and he did it because he wanted to preserve the life that he had been living in
26 Montgomery County for so--all those decades. When we were here a year ago, at this
27 tribute for my mother, I kind of saw it as a finality to my life, as well. I mean, I grew up at
28 the Board of Education office. I grew up at the County Council office. My daughters have
29 definitely grown up at this office. And I kind of saw it as my last time here, as well. And
30 then Dad won. It was kind of a --like a homecoming, a little bit, to come back here. And
31 today, walking through these doors, I realized the finality of it all really does exist. There
32 won't be another Praisner on the dais. There won't be another Praisner office. And it hurts.
33 But I am proud of what my parents have accomplished, and I hope that their legacy will
34 live on for many years to come. I would, um, most especially like to thank Joy and Sherry
35 and Claire and Pat and Jackie ?????, because to me, this is kind of a finality with you all,
36 as well. And I want to thank you for everything you have done for my mother, for my
37 father, and for us. I'm not sure how we could have gotten through this last year without
38 you all. Thank you very much.

39
40 COUNCIL PRESIDENT ANDREWS:

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1 Thank you, and rest assured, the Praisner legacy will live on, and you are always
2 welcome here, as are your family and friends. Thank you very much for those-- for those
3 remarks, and thank all my colleagues for their remarks. Thank you all for being here to
4 help remember Don and celebrate his life, and we will miss him, but we will continue on
5 with the public's business, as he would want, as Marilyn would have wanted, as well.
6 Thank you all. We're going to take a short break, and then we'll come back for the
7 remainder of the session.

8
9 COUNCIL PRESIDENT ANDREWS:

10 Good morning, everybody. We're going to reconvene. All right. Welcome back. We are
11 going to resume the Council session, and we're going to begin with an invocation from
12 Imam Daud Hanif from the Ahmadiyya Movement in Islam, Silver Spring. Thank you for
13 being with us this morning. Please stand, everybody.

14
15 IMAM DAUD HANIF:

16 In the name of Allah, the gracious, the merciful, all praise belongs to Allah alone, Lord of
17 all the worlds, the gracious, the merciful, master of the Day of Judgment. Thee alone do
18 we worship, and thee alone do we implore for help. Guide us in the right path--the path of
19 those on whom thou has bestowed thy blessings and favors. Our Lord God has said, O
20 mankind, we have created you from male and female, and we have made you tribes and
21 subtribes that you may know one another. Verily, the most honorable among you in the
22 sight of God is he who is the most righteous among you. Surely God is all-knowing, all-
23 aware. And of his signs is the creation of the heavens and the earth and the diversity of
24 your tongues and colors--in that, surely a sign for those who possess knowledge. Our
25 Lord God, you have said, it is decreed for thee that thou shall not hunger therein, nor shall
26 thou be naked, and that thou shall not thirst therein, nor shall thou be exposed to the sun,
27 and that who so acts righteously, whether male or female, and is believer, we will surely
28 grant him a pure life, and we will surely bestow on such their reward according to the best
29 of their works. O our Lord, presently we have a very grave situation of our economy.
30 People are in dire need of guidance and help. Our president, Barack Hussein Obama, and
31 other leaders are trying their best to remedy the situation. We beseech you, O our dear
32 God, to grant wisdom to all leaders of ours at every level to work out plans and their
33 execution in the right manner and enable us all to cooperate with our authorities and to
34 work diligently toward bringing about the required healthy overall change, and make the
35 economy of this country and county of ours very healthy and most strong and beautiful in
36 the whole world, and grant all residents your bounties and favors in abundance and
37 remain our protector and guide. Amen.

38
39 COUNCILMEMBERS:

40 Amen.
41

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1 COUNCIL PRESIDENT ANDREWS:

2 Thank you, Imam. OK. We'll now-- we'll have a presentation, a proclamation in recognition
3 of Rabbi Gerry Serotta, recipient of the Raphael Lemkin Human Rights Award, by
4 Councilmember Leventhal.

5
6 COUNCILMEMBER LEVENTHAL:

7 Thank you, Mr. President. It's a great pleasure to recognize distinguished residents of the
8 county when they receive national recognition, and I wanted to take this opportunity to
9 honor Rabbi Gerry Serotta, who, earlier this year, formed a new synagogue which I and
10 my family joined--the Shirat HaNefesh community in the lower part of Montgomery
11 County, who is also a national leader on issues of human rights and social justice and
12 peace in the Middle East. Rabbi Serotta is the founding member of Rabbis for Human
13 Rights-North America. And that organization hosted a major dinner last fall, and it honored
14 Rabbi Serotta, and I just wanted to bring his accomplishments to the attention of my
15 colleagues and to the entire community, and so I'm presenting to Rabbi Serotta, my good
16 friend and my rabbi, this proclamation. Whereas the celebration of the second Raphael
17 Lemkin Human Rights Award is an occasion to salute all those who have made great
18 contributions to human and civil rights, and whereas Rabbi Gerald Serotta has been a
19 national leader in the Jewish community in the area of social justice for many, many
20 years, and whereas Rabbi Gerald Serotta is the founding member of Rabbis for Human
21 Rights-North America, an organization of rabbis from every movement of Judaism
22 dedicated to protecting the human rights of all in Israel and North America and committed
23 to give voice to the Jewish religious traditions of human rights, and whereas Rabbi Gerald
24 Serotta founded the New Jewish Agenda, participated on the initial board of the Jewish
25 Fund for Justice, has been involved in interfaith work through the Fellowship of
26 Reconciliation, the Interfaith Committee for Peace in the Middle East, the Faith in Politics
27 Institute, and the Compassion Forum, and who currently serves as spiritual leader for the
28 Shirat HaNefesh community in Montgomery County, and whereas Rabbi Gerald Serotta
29 has made involvement with international, national, and local Jewish and secular
30 community affairs a lifetime commitment, and whereas Rabbi Gerald Serotta is a true
31 exemplar of the Jewish ideal of Tekun Olam--repairing the world through social action--
32 and his life's work reflects the highest standards of service and integrity, now, therefore,
33 be it resolved that the County Council of Montgomery County, Maryland, hereby proclaims
34 its commendation to Rabbi Gerald Serotta for receiving the prestigious second Raphael
35 Lemkin Human Rights Award and wishes him well in all his future endeavors. Signed
36 today by our Council President Phil Andrews.

37
38 RABBI GERALD SEROTTA:

39 Thank you.

40
41 PHOTOGRAPHER:

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1 I'll take a few of these. That looks great.

2
3 RABBI GERALD SEROTTA:

4 Can I just say, the most eloquent statement of human rights was that made by the Imam,
5 to which we could all say Amen--that we are founded in the image of God, that God grants
6 all of us as human beings the right to food and shelter, the kinds of rights that the County
7 Council eloquently supports. And it's a pleasure to receive this award in front of the
8 Council with my friend George, who I know also works diligently on behalf of human
9 rights, and I wish the Council well and thank them so much for this recognition. I know the
10 work they do. I know many of the Councilmembers, and they are a bastion of human
11 rights, as is our county, and we should thank God in the name of all of the traditions here
12 represented in the room, and thank you so much for this honor.

13
14 COUNCILMEMBER LEVENTHAL:

15 All right. ????? Good job.

16
17 COUNCIL PRESIDENT ANDREWS:

18 Thank you, Rabbi Serotta, for your excellent work in the community. We'll now move on to
19 general business. Miss Lauer.

20
21 LINDA LAUER:

22 Good morning. The Consent Calendar A--we have a change that we're actually going to
23 pull that item off the Consent Calendar so that the Council can weigh the rules and
24 discuss it and then act on it this morning. In Item D, introduction of a--we're changing it.
25 It's not a supplemental appropriation. Rather, it's now a special appropriation. This is the
26 one pertaining to Park and Planning's capital budget request and CIP amendment for the
27 Woodstock Equestrian Center. And then a public hearing this afternoon--the public
28 hearing on the SilverPlace headquarters. We do have a change on the agenda. The
29 PHED --just to note that the PHED Committee worksession will be scheduled at a later
30 date.

31
32 COUNCIL PRESIDENT ANDREWS:

33 OK.

34
35 LINDA LAUER:

36 So that's it.

37
38 COUNCIL PRESIDENT ANDREWS:

39 Thank you very much.

40
41 LINDA LAUER :

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1 We did receive one petition, if I could tell you. It's one supporting the operations and
2 renovation of the Gaithersburg Library. Thank you.

3
4 COUNCIL PRESIDENT ANDREWS:

5 OK. All right. So we're going to pull Item A off the Consent Calendar, have a separate
6 discussion on that. That's the resolution to schedule a special election. Let me ask if there
7 are any questions or comments about what is remaining on the Consent Calendar, which
8 are items B through G.

9
10 COUNCILMEMBER KNAPP:

11 I'll move adoption of it.

12
13 COUNCIL PRESIDENT ANDREWS:

14 OK. All right.

15
16 COUNCILMEMBER KNAPP:

17 But I have a question of...

18
19 COUNCILMEMBER LEVENTHAL:

20 Second.

21
22 COUNCIL PRESIDENT ANDREWS:

23 All right. So the Consent Calendar is moved for adoption by Councilmember Knapp and
24 seconded by Councilmember Leventhal.

25
26 COUNCILMEMBER KNAPP:

27 The--one of the--what practical-- Oh. We'll do that, too.

28
29 COUNCIL PRESIDENT ANDREWS:

30 I'm sorry.

31
32 COUNCILMEMBER LEVENTHAL:

33 We have the Consent Calendar before us now. We'll take this up...

34
35 COUNCIL PRESIDENT ANDREWS:

36 Yeah. We'll come back on the minutes.

37
38 COUNCILMEMBER KNAPP:

39 What's the practical app--result of changing the introduction of the Woodstock Equestrian
40 Center Phase 2 from a supplemental to a special appropriation? What...

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1 COUNCIL PRESIDENT ANDREWS:

2 The answer is--

4 COUNCILMEMBER KNAPP:

5 Here it comes.

7 COUNCIL PRESIDENT ANDREWS:

8 The answer is coming to the table.

10 MARLENE

12 MICHAELSON:

13 It will require six votes of the Council, but it cannot be a supplemental unless it is
14 transmitted by the Executive, and we have not yet received an Executive
15 recommendation, so it had to be a special.

17 COUNCILMEMBER KNAPP:

18 OK. Just need to understand the procedural reasons. Thank you. Thank you, Mr.
19 President.

21 COUNCIL PRESIDENT ANDREWS:

22 OK. You're welcome. All right. Let me mention, on Item F of the Consent Calendar, which
23 is the supplemental appropriation to the County government's FY09 operating budget, the
24 Fire and Rescue Service--\$930,000 for the Urban Area Security Initiative Metropolitan
25 Medical Response System grant award, which is from the Federal government-- there's
26 no match required for that. However, there is a cost of sustaining it, which-- the committee
27 asked for, and we did receive this morning, information about what the estimated costs
28 would be on an annual basis for sustaining that system, the Medical Response System
29 that would part of the Metropolitan Medical Response System, and you should have
30 received a memorandum this morning from Minna Davidson that came from interim Fire
31 Chief Richard Bowers that breaks out --and that memo was prepared by Assistant Chief
32 Mike McAdams-- which breaks out the estimated sustainment costs beginning in FY11 for
33 that initiative. The total is \$382,000. We wanted to --the committee wanted to make sure
34 that we had that information for the Council so that the Council understands that that is
35 the estimated cost of sustaining that initiative as of FY11. So if anyone has any questions
36 about that, they are --they have the memo before them. That would be what we'd have to
37 do to keep it going if we--if it was an issue. All right. I don't--I see Councilmember Ervin
38 has a comment about the Consent Calendar.

40 COUNCILMEMBER ERVIN:

41 I do not. I'm waiting for--to come back around.



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1
2 COUNCIL PRESIDENT ANDREWS:

3 Oh, OK. You're waiting. OK. Very good. All right. Well, I don't see any other comments on
4 what we have on the Consent Calendar at this point. All those in favor of the Consent
5 Calendar, please raise your hand. That is unanimous among those present. That's
6 Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen, myself,
7 Councilmember Knapp, Councilmember Ervin, and Councilmember Leventhal. That's 7-0
8 for the Consent Calendar. All right. We're now going to go the minutes first. Let's get that
9 done. Approval of the minutes.

10
11 COUNCILMEMBER LEVENTHAL:
12 Let's approve the minutes.

13
14 COUNCILMEMBER ERVIN:
15 Second.

16
17 COUNCIL PRESIDENT ANDREWS:
18 All right. Moved by Councilmember Leventhal to approve the minutes and legislative
19 journal of January 12, 22, 26, and 27 of 2009. Seconded by Councilmember Ervin. No
20 discussion, I see. All those in favor of approving those minutes, please raise your hand.
21 That's unanimous among those present. That's Councilmember Elrich, Councilmember
22 Trachtenberg, Councilmember Floreen, myself, Councilmember Knapp, Councilmember
23 Ervin, and Councilmember Leventhal. The minutes are approved 7-0. All right. We're now
24 going to go to Item A, which we pulled off the Consent Calendar. I'll make a couple
25 opening comments and then open it up to my colleagues. As everyone is aware, the
26 Council needs to take action to establish a process for filling the vacancy that has
27 occurred on the Council with the death of Councilmember Praisner--Don Praisner--and
28 the law calls for a special election, and so that's what we're in the process of doing. What
29 this resolution would do is to establish the dates for a special election, and the resolution
30 that is before us now for introduction--and I should first ask, we need to get it on the table
31 first, so I first--I first need a motion to suspend the rules to introduce it and to be able to
32 take action today.

33
34 COUNCILMEMBER KNAPP:
35 So moved.

36
37 COUNCILMEMBER ERVIN:
38 Second.

39
40 COUNCIL PRESIDENT ANDREWS:

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1 That --OK. That's Councilmember Knapp making the motion to suspend the rules so that
2 the Council can take action on this resolution today. Councilmember Ervin seconds. That
3 requires six votes in order to be able to take action by suspending the rules today. All
4 those in favor of introducing it and suspending the rules, which will enable us to take
5 action, please raise your hand.

6
7 COUNCILMEMBER LEVENTHAL:
8 Parliamentary inquiry.

9
10 COUNCIL PRESIDENT ANDREWS:
11 Yes.

12
13 COUNCILMEMBER LEVENTHAL:
14 I thought we only vote after we debate the motion. The motion is before us, but we don't
15 need to vote--

16
17 COUNCIL PRESIDENT ANDREWS:
18 Well, we need to introduce the resolution.

19
20 COUNCILMEMBER LEVENTHAL:
21 OK. I don't think we vote on suspending the rules right now, that we can--

22
23 COUNCIL PRESIDENT ANDREWS:
24 I think we do, actually.

25
26 COUNCILMEMBER LEVENTHAL:
27 Well, I need some help on this.

28
29 COUNCIL PRESIDENT ANDREWS:
30 We-- well, let's see.

31
32 COUNCILMEMBER LEVENTHAL:
33 Well, generally we waive the rules and adopt it at the same time.

34
35 MICHAEL FADEN:
36 Introduction doesn't need a separate vote, but suspension of the rules does.

37
38 COUNCILMEMBER LEVENTHAL:
39 But suspension of the rules generally is taken up at the time we pass the motion. We
40 haven't debated the motion yet.



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1 MICHAEL FADEN:

2 You could do it either way.

4 COUNCIL PRESIDENT ANDREWS:

5 All right. Well, the suspension of the rules doesn't--doesn't determine when the dates are.
6 It just allows us to take action today.

8 COUNCILMEMBER LEVENTHAL:

9 OK. I'd like to have the benefit of the debate before I decide whether or not I'm prepared
10 to--to pass the resolution and expedite it. There's a lot of information floating around right
11 now that I didn't have the benefit of, so I'd like to hear some conversation. I may very well
12 be prepared to adopt a resolution today, but I'm not prepared to vote right at this minute,
13 until I have the benefit of some of this discussion.

15 COUNCIL PRESIDENT ANDREWS:

16 Right. All right. Well, the resolution to suspend the rules is different than the resolution to
17 pass. It takes six votes to introduce the resolution if you're going to suspend the rules in
18 order to take action that same day, and then it's five votes to pass the resolution.

20 COUNCILMEMBER LEVENTHAL:

21 But in my own mind, Mr. President, I haven't resolved whether I want to take action
22 today...

24 COUNCIL PRESIDENT ANDREWS:

25 OK. All right. I hear you.

27 COUNCILMEMBER LEVENTHAL:

28 ... until I have the benefit of the conversation, so...

30 COUNCIL PRESIDENT ANDREWS:

31 All right. Well, we'll have the conversation first, then. All right. Let me make a few opening
32 comments about the resolution that's before us. The resolution would establish the dates
33 for the special election to fill the vacancy in Council District 4, and it would establish the
34 dates as April 21 for the primary election and May 19 for the general election. The--we
35 have received information from the School Board for the Montgomery County public
36 school system and from the Board of Elections. There was an original resolution that
37 would have had the dates as April 14 and May 12. Both the school system and the Board
38 of Elections strongly objected to the April 14 date for a couple reasons. The school system
39 has a holiday the day before and the week before, and--state holiday. It would require
40 paying workers 2.5 times normal pay if you were to have state employees working that
41 day, so that was a concern. It also conflicts with the end of the Passover holiday, so April



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1 14 was determined not to be a good date for a number of reasons. Of course, there are
2 other options. Some have suggested moving it up a week to April 7. The problem, as I see
3 it, with that is that falls during spring break, when many County residents are away and
4 are likely already planning to be away. If you move it up earlier than that, in my judgment,
5 at least, it's too soon. And so I think the best alternative, which is reflected in the
6 resolution, is to move the elections back one week to April 21 for the primary and May 19
7 for the general, which is very similar to the schedule that we had last year that seemed to
8 work reasonably well. So that is the--that's what I think is the best alternative given the
9 different problems with different days. The school system expressed, as I said, concern
10 about April 14. They also had some concern about May 12, and so the April 21/May 19
11 date appears to be a date that is workable for everybody, even if it's not--there is no ideal
12 timeframe here, I think. But I do think that it is important to give both the people of District
13 4 and the candidates who are going to run a chance to have a reasonable amount of time
14 to meet each other and get their views expressed and their questions answered, and I
15 think having a schedule such as proposed, with the primary in April on the 21st and the
16 general May 19, allows sufficient time for that to occur, and so that is the rationale for the
17 dates. A separate issue which has come up, and which I know we'll have some discussion
18 about, is whether the board might consolidate polling places to save money. The special
19 election is projected to cost about \$1.3 million or so. That's partly driven by the number of
20 staff that they need to cover the number of polling places, and the board's--one possibility
21 is the board will decide to combine polling places to reduce the cost but still to have
22 sufficient polling places so there's no problem in handling the flow of voters who come
23 through the polling place. So that is an item that I know we'll have some discussion about.
24 That may ultimately be up to the board to decide as a state agency. Certainly, there's no
25 problem--certainly, it's appropriate for the County Council to express its view and opinion,
26 but the ultimate decision may, in that case, be up to the Board of Elections, although we're
27 still seeking to determine that in terms of the legal question there. So let's first address the
28 date issue and what people's reaction is to the proposed dates in the resolution of April 21
29 and May 19, and then we can talk about the other aspects, such as the possibility of
30 combining polling places. So let's first address the date, if we can, and Councilmember
31 Ervin had her light on first. I will call on her.

32
33 COUNCILMEMBER ERVIN:

34 Thank you, Mr. President. I definitely want to address the date as well as the consolidation
35 issue, but I'll--since we're on the date right now, I'm going to talk about what happened
36 last year in the special election in District 4. There were a lot of difficulties that voters had
37 because school was open that day, and there were many voters who attempted to go to
38 their polling place and the parking lots were full. Some voters didn't wait, so they weren't
39 able to vote, they didn't vote, because, you know, teachers and administrators and
40 parents and others fill those parking lots up on school days. And most people are used to
41 those polling places being open and available for voters to come and vote at their

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1 assigned places. Usually those are days that there is no school. I have some letters here
2 to back up the claim that people just thought it was very inconvenient and not conducive
3 to an open process for an election. The second point has to do with the functioning of the
4 school system itself. We're talking about--especially in elementary schools, where there
5 are a lot of security concerns about individuals walking in and out of the building
6 unaccompanied or not signing in and out. There are many principals who had contacted
7 my office saying that they thought it was a very bad idea. They went through the
8 experience last year, and they don't think it's a workable solution. Also, the location of the
9 voting booths are usually in cafeterias or multipurpose rooms, where children were being
10 served meals and other activities during the school day, so the school system had to
11 make a lot of adjustments on that day. I really think this comes down to, President
12 Andrews, a question of whether or not we want to encourage voters to come out and vote
13 in special elections, or are we finding ways to discourage their ability to get to polling
14 places. So I'm really concerned that what we're doing here is working in the opposite
15 direction, so I wanted to speak to those issues, and if this is not the proper time to talk
16 about the consolidation of the voting--the polling places, I think it's a serious concern,
17 especially in this district, so we can get to that issue second.

18
19 COUNCIL PRESIDENT ANDREWS:

20 OK. Thank you. I will say that it's the absolute intent to--which is why we're having a
21 special election rather than appointment --to hear from the people in District 4 rather than
22 to have eight members of the Council make an appointment. Let me turn now to
23 Councilmember Floreen.

24
25 COUNCILMEMBER FLOREEN:

26 Thank you. This has surely been a fast-moving process. I got a copy of the letter from
27 MCPS by taking--asking my office to take it off the website of somebody's blog. I don't
28 know why it wasn't distributed to Councilmembers. So we need to work on our paper
29 management, I think. But in any event, they're telling us that because of the functioning of
30 the school buildings--I'll be glad to share it with you. Because of the--huh? The functioning
31 of the school buildings and their activity in the school system, as Miss Ervin has indicated,
32 they highly recommend that we go with April 7 and May 5. There are surely trade-offs
33 here in terms of accessibility of the building, and surely we will have to make sure that the
34 residents in District 4 have-- are well apprised of the ability to vote by absentee in this
35 case. It's terrible for this community to have to go through this all over again. I don't see
36 any way around it. And this is not the time, I have to say, to worry about saving costs.
37 Saving costs, consolidation of polling places, I think is a statement of disenfranchisement
38 for Montgomery County voters, and I think it's exactly the opposite of the direction in which
39 we'd like to move. Surely there may be some cost-saving approaches we can look at, we'd
40 ask the Board of Elections to look at in the future. Gosh, looking at your schedule here,
41 what you have to do to put on an election is not something everyone appreciates--all the

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1 steps. It's really quite daunting. But until we have a better system, I don't think this is the
2 time to try out a new one. I think we're going to have to look at--it's going to be a real
3 challenge to get the word out there to the community that there is an opportunity for them
4 to participate in the democratic process. It's probably going to cost us more, rather than
5 less, and I don't see any way around it, so I would support the initiative as identified by the
6 school system. And certainly the Board of Edu-- the Board of Elections raised a lot of
7 concerns about the process, as well, to choose instead the April 7 and May 5 dates for the
8 special election process. So that would be my support--my recommendation. I don't think--
9 I have to say, I don't think there's any ill intention here, but it's really a question of getting
10 the community's engagement and working towards that, and it's going to be hard no
11 matter how we cut it, but let's not make it harder. Changing rules or changing expectations
12 in midstream is only going to create more confusion and contribute to a lower turnout
13 rather than at least--a turnout equal to what we had last year, and hopefully we can get
14 more folks engaged. And let me--I'll share this, what I got off the Web. OK.

15
16 COUNCIL PRESIDENT ANDREWS:

17 OK. All right. Well, we have two separate issues here, and a motion is in order, if there is
18 interest in a motion to substitute different dates, and we can debate that issue first, and
19 then we can come back to the issue about the potential combining of polling places, which
20 may still remain in the jurisdiction of the Board of Elections, but we can certainly express
21 what the Council thinks should be done. So first, is there a motion to change the dates
22 that are proposed currently, which are--

23
24 COUNCILMEMBER ERVIN:

25 Yes. I have a motion.

26
27 COUNCIL PRESIDENT ANDREWS:

28 All right. Go ahead.

29
30 COUNCILMEMBER ERVIN:

31 I move to amend your resolution to say that the County Board of Elections must hold a
32 special primary election to fill the vacancy in the office of Councilmember representing
33 Council District 4 on April 7, 2009. Number two, the County Board of Elections must hold
34 a special general election to fill the vacancy in the office of Councilmember representing
35 District--Council District 4 on May 12, 2009.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Is that--all right. So that's a motion by Councilmember Ervin. Is there a second?

39
40 COUNCILMEMBER FLOREEN:

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1 I'll second it. I offer a friendly amendment to ask, if that is adopted, to ask that staff adjust
2 the other dates listed in the resolution to conform with that. There are filing dates that
3 would have to be adjusted, as well.

4
5 COUNCIL PRESIDENT ANDREWS:
6 OK.

7
8 COUNCILMEMBER ERVIN:
9 I accept that.

10
11 COUNCIL PRESIDENT ANDREWS:
12 OK. All right. So we have a motion seconded, and we'll have discussion on that motion at
13 this point. Let me first comment that I do not support the motion because I think April 7 will
14 result in a situation where you have thousands of people who are out of town on--during a
15 long-scheduled spring break, and I think we should avoid scheduling elections during such
16 events and such holidays that have been on the calendar for a long time. So I do not
17 support it for that reason. Let me turn to Councilmember Knapp and then Councilmember
18 Elrich.

19
20 COUNCILMEMBER KNAPP:
21 Thank you, Mr. President. I obviously wasn't in the mail distribution, so I didn't know much
22 of this until about 10 minutes ago, but when we did this last year, at what Council meeting
23 did we set the date for the special elections? Because I recall it was actually later in
24 February.

25
26 MICHAEL FADEN:
27 Yes. It was February 19.

28
29 COUNCILMEMBER KNAPP:
30 So we're about a week, week and a half ahead of where we were last year.

31
32 MICHAEL FADEN:
33 About a week ahead.

34
35 COUNCILMEMBER KNAPP:
36 So practically, if we were to set the date today and accept the motion that's been made,
37 we'd still need roughly the same time schedule we were last year.

38
39 MICHAEL FADEN:
40 Yes.



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1 COUNCILMEMBER KNAPP:

2 Because we did the 14th or 15th last year, so... OK. I think--Both points I've heard are
3 valid points. I think it's important. I think the concerns, practical concerns that the school
4 employees have raised need to be taken into account. Can the Board of Elections move
5 that quickly? I mean, they moved roughly that quickly the last time, so I'm guessing the 7th
6 or the 14th or the 23rd, it probably doesn't make a difference, but I just wanted to check.
7

8 COUNCIL PRESIDENT ANDREWS:

9 Why don't you come on up?
10

11 COUNCILMEMBER KNAPP:

12 You guys actually have to put the other pieces together, so...
13

14 COUNCIL PRESIDENT ANDREWS:

15 Go ahead and introduce yourself, please, for the people listening and watching.
16

17 MARGARET JURGENSON:

18 Margaret Jurgenson, Election Director, Montgomery County.
19

20 JERROLD GARSON:

21 Jerrold Garson, President of the Montgomery County Board of Elections.
22

23 COUNCILMEMBER KNAPP:

24 Welcome, and congratulations on your new position.
25

26 JERROLD GARSON:

27 Thank you.
28

29 MARGARET JURGENSON:

30 Councilmembers, when we were first approached about a possibility of putting together a
31 timeline, our original presentation was April 7 and May 12--April 7 because we did consult
32 with the school system, and they had stated that because the students would be out of the
33 school, there would be staff, administrative staff, there, so that we would be able to get
34 our equipment in there. The night before the election, we always have the election judges
35 come to the site, set up the polling place, and so that they are ready at 6:00 in the
36 morning to get the touch screen and the electronic poll books going. So these are the
37 dates that we had originally selected. ?????
38

39 JERROLD GARSON:

40 The 7th.
41

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1 MARGARET JURGENSON:

2 The May 5 date--which is the other date that the school suggested, because on--the week
3 of May 11 is, I guess, the highest number of AP--students taking AP testing--is acceptable
4 to us. It's our second choice, and as I had articulated to our attorney and Mr. Faden and
5 Mr. Andrews, if there was a close election and there had to be a recount or a contest of
6 election, that extra week gives us time to do all of the processing to conduct a recount. So
7 that was why we came up with the May 7 and May 12 date, but--and I do have a timeline
8 for that.

10 COUNCILMEMBER KNAPP:

11 The issue of vacation and spring break, do you see that--if we were to pick the 7th, would
12 that be an issue from your perspective? You said the 7th is a preferable date, but what
13 about election judges or anything like that?

15 MARGARET JURGENSON:

16 The election judges, for the most part, when we've been talking to them, preferred the
17 April--they definitely hated the April 14 date because the people that work for us were
18 reporting that they were taking off Wednesday and Thursday after, so they were leaving
19 April 8 and 9 to do the holiday.

21 COUNCILMEMBER KNAPP:

22 So Tuesday would be OK.

24 MARGARET JURGENSON:

25 Tuesday. The other thing that, because we were talking about consolidating polling
26 places, which I understand is a separate issue --but one of the things that we were going
27 to do, which we did the last time, was to send out a postcard notifying voters that there is
28 going to be a special election. Because there's no-excuse absentee voting now because
29 of the constitutional amendment, we were going to include information on this postcard to
30 encourage people that if they were going to be gone, they could certainly go to our
31 website, download the absentee application, and have that sent to them. So we believe
32 that some of these issues would be resolved.

34 COUNCILMEMBER KNAPP:

35 So you guys like--

37 MARGARET JURGENSON:

38 Which is-- and then, of course, we also send the sample ballot to every registered voter,
39 with the name of the polling place and the correct ballot--Republican or Democrat.

41 COUNCILMEMBER KNAPP:



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1 OK. So the folks who want to administer the elections and the folks where we would
2 actually conduct many of the elections think April 7 is the preferred date.

3
4 MARGARET JURGENSON:

5 Yes.

6
7 COUNCILMEMBER KNAPP:

8 OK. And May 5 is...

9
10 MARGARET JURGENSON:

11 I'll live with either date--May 5 or May 12. I will--

12
13 COUNCILMEMBER KNAPP:

14 Given the fact that we've got big testing at the schools--

15
16 MARGARET JURGENSON:

17 You know, the issue is--the other thing that I wanted to tell you is the other thing that we're
18 going to do in the sample ballot, because of the issues that were brought up from the last
19 special elections that were held, is that we're going to include on the specimen ballot
20 that's mailed to every voter, to avoid congestion, that the schools start at these specific
21 times-- the elementary school, the middle school, and the high school--to try to reduce the
22 traffic issues. I will tell you that one of the largest complaints that we receive is about
23 parking.

24
25 COUNCILMEMBER KNAPP:

26 Yeah. So... OK. No, that's actually very helpful, and I just--since obviously, no matter what
27 we do, you're going to get to do another special election, I just want to also express my
28 appreciation to the board and to all those election judges who are out there, because this
29 has been an unusual 18-month period in which you've got to conduct not just the
30 presidential election of significant proportions, but also a series of special elections, and I
31 thank you for your efforts because I know that hasn't been easy, and they've gone off so
32 far without too many hitches. So thank you very much for that, and thank you for the
33 information.

34
35 COUNCIL PRESIDENT ANDREWS:

36 Councilmember Elrich.

37
38 COUNCILMEMBER ELRICH:

39 I'm a little bit conflicted about this, for a couple reasons. For example, I don't support
40 consolidating the polling places, and I know the response is that you would put this out in
41 the postcard, and people would know by the postcard that there's another place to vote,

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1 and I think that effectively, that postcard won't really work, and I think a lot of people will
2 go where they're expected. But I think by the same token, the postcard is not going to get
3 people to trigger an absentee ballot, either, if they're on vacation. I mean, it's hard to
4 argue that the postcard takes care of disenfranchising people who might otherwise be on
5 vacation but is inadequate to protect against disenfranchising people because they won't
6 know where to go to vote. I think the argument, if it doesn't work, it doesn't work, and it's
7 not going to work for moving the polling place, and it's not going to move for getting
8 people to do absentee ballots, and I'm really concerned about disenfranchising people,
9 and I think that if people go out to vote, parking may be a pain in the butt, but if I've gone
10 out to vote, I'm going to park, and I'm going to go and vote because I'm motivated enough
11 to go out to the polls and do that. So I guess I--you know, I'm not sure that the parking
12 issue is enough for me. I am very concerned about people being on vacation and not
13 filling out an absentee and then not showing up, and I think that would be a mistake. The
14 other problem is it shortens the election period, and if this were the summer, I would have
15 fewer concerns. But any of us who've done this know that campaigning doesn't work real
16 well in the evening, and the earlier it gets dark, the less likely you are to go knocking on
17 doors, the less likely are people going to be to have you happy about knocking on their
18 door when it's dark. And so I worry about the loss of daylight in a constricted campaign
19 period really is going to push things to the couple of weekends that we have, because if
20 you think about it, five days a week, there are no doors to knock on because nobody is
21 home. Most people are out working. So you're left with basically your weekends to play
22 with, and evenings, and if the evenings are constrained by, you know, getting darker early,
23 I don't think you're going to get as much effective campaigning, and I think in a special
24 election, we're already dealing with a shorter time frame than we are with any of our
25 regular elections. I mean, we're out there campaigning probably a year for a regular
26 election. Now we're talking about doing this in the space of two months, constrained
27 already. I think the daylight constrains it further, so I'm not comfortable with shortening the
28 election period.

29
30 COUNCIL PRESIDENT ANDREWS:

31 Thank you, Councilmember Elrich. Uh...I'm looking at the lights here. Who hasn't spoken
32 yet? Council Vice President Berliner.

33
34 COUNCIL VICE PRESIDENT BERLINER:

35 I sense we have two conversations going on simultaneously, but there's a common
36 thread, and that is disenfranchisement, and there may be a way in which one achieves the
37 least amount of disenfranchisement, which was-- would be to keep the dates that have
38 been previously proposed by the original resolution, but to adopt what I perceive to be
39 your view with respect to the consolidation. I'm concerned that the dates as originally
40 proposed would, in fact--as modified. Spring break is a big deal. I mean, spring--I just
41 made reservations for spring break. Lots of people look at that, and it's a big deal, so I

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1 don't get how we don't--I appreciate from the Board of Elections' point of view, in terms of
2 your own folks, why that's a consideration, but quite frankly, the bottom-line consideration
3 is our citizens and how many will be able to vote. So I'm concerned that if we want to
4 maximize voter participation and limit disenfranchisement, I don't get how it is that we
5 don't do the dates as originally proposed, plus your suggestion with respect to
6 nonconsolidation. And it could be that we end up paying more dollars, but as you
7 observed, in this context, we may need to pay more dollars to ensure maximum
8 participation, and that that seems to me to be the objective here, and if... I would need to
9 understand how it is that the dates as originally proposed would result in less people
10 participating than during a school break/Easter break period of time. And so I--that seems
11 to me to be a tough call, but my instinct tells me that to schedule this during spring break
12 is--that's not optimal.

13
14 COUNCIL PRESIDENT ANDREWS:

15 I want to just comment that I would like to bring the Council together on this, and I think
16 the Council Vice President has suggested a good approach, because I think if you keep
17 the dates of April 21 and May 19 and you don't have a combined, a combination of polling
18 places, you maximize the odds in both cases--that you will have the most people around
19 in the county on Election Day, and you will not have changed what they are used to in
20 terms of getting out to vote. And I think that is a strong appeal of what the Council Vice
21 President just said. Let me now go to Councilmember Leventhal, then Councilmember
22 Ervin, and we'll keep going.

23
24 COUNCILMEMBER LEVENTHAL:

25 I understand--well, first of all, I just saw this letter from the Board of Elections this morning.
26 It may have been delivered to my office. A lot of paper comes in and out. Sometimes we
27 see it, sometimes we don't, so if we look like we're at sixes and sevens here and
28 scrambling and making it up at the last minute, we are, because we're all being confronted
29 with new information and trying to assess it and absorb it. If I understand my friend and
30 colleague's amendment, the elections would be held on April 17 and May 12.

31
32 COUNCILMEMBER ERVIN:

33 April 7.

34
35 COUNCILMEMBER LEVENTHAL:

36 April 7. I got it. I knew what I was saying, but it didn't come out right. On April 7 and May
37 12. The date of April 7 is identified, apparently, both by the Board of Elections and the
38 Board of Education because it doesn't interfere with school, it doesn't pose the security
39 problems, there isn't a parking problem. I heard Councilmember Ervin's remark. But the
40 date of May 12 is an ordinary school day, so all of the problems that are identified by the
41 Board of Elections and Board of Education for the primary would still take place on the

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1 general, and I now see that my friend and colleague Mr. Knapp is showing Miss Ervin a
2 letter from Montgomery County Public Schools that I haven't seen, so I wonder how to
3 resolve this here this morning. I just feel like we need--this--it feels a little half-baked, and I
4 don't blame anyone. Everyone is scrambling. We all regret the loss of our friend and
5 colleague Mr. Praisner, and we're all trying to make good public policy, but we're sort of
6 doing it behind the eight ball. And I understand we don't meet again for two weeks, but
7 based on Mr. Knapp's question to Mr. Faden, I'm not entirely sure that February 24 would
8 be too late to make a decision on this matter, and I'd like to hear from the community.
9 There are some distinguished community representatives here who are concerned about
10 disenfranchisement. My understanding is their primary concern is about the number of
11 polling places, and not so much the date. I've gotten a couple of messages saying, "Don't
12 hold it on a school day," but I don't see any option that avoids holding the election on a
13 school day. If there is some other option that avoids holding it on a school day, that hasn't
14 been presented to us yet. And I do think the spring break issue is a serious issue, so I'm
15 not sure --I mean, you've got the issue of the voters, and I heard Margaret Jurgenson say
16 that's easily solved because anyone can vote absentee. I've been through a few
17 campaigns in my day, and it's a busy day, and it has more to do than just the voters.
18 You've got the people driving voters to the polls. You've got the Democratic and
19 Republican precinct officials at the polling place. You've got, you know, volunteers
20 bringing sandwiches and coffee and doughnuts. You got an awful lot of people who are
21 busy on Election Day, including the voters who we care about and are trying to
22 accommodate. So I-- so I'm feeling very anxious having to vote on this without a little more
23 input and a little more public vetting of what is most convenient for the residents of District
24 4 and the potential candidates and their potential volunteers.

25
26 COUNCIL PRESIDENT ANDREWS:

27 Thank you. Well, I--we, I think, must keep foremost in our mind what is most convenient
28 for the voters of District 4. What we may end up choosing may not be most convenient for
29 the school system or for the Board of Elections, but what we should be doing is what is
30 most convenient for the voters. I think--and that is doable by the other agencies. I think we
31 have to weigh in on the side of--come down on the side of what's most convenient for
32 voters, and I certainly think that if there was an election scheduled during spring break,
33 that would be very inconvenient for many voters who already have plans to be out of town.
34 So while that may be more convenient for the school system and the Board of Elections,
35 and it may be better for parking, if people are out of town--thousands of people are out of
36 town--that to me is the issue that trumps that. We don't normally schedule elections
37 during, you know, holidays, and that is a longstanding, predictable holiday that people
38 have plans for. I think there is a real argument, and I respect it, that you don't want to
39 change the polling places or the rules about where people vote, that they're used to,
40 because there is a chance that it will throw some people off, even if you do a good amount
41 of education, which--there would be a mailing required. So I'm very sympathetic to that,

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1 and I would like to see if the Council can agree on the dates, because we won't be back
2 for two weeks, and that means that we will be pushing the election even further back, if we
3 come back in two weeks. Councilmember Ervin.

4
5 COUNCILMEMBER ERVIN:

6 Thank you very much. The reason I brought this to the attention of the Council this
7 morning was to take this off the Consent Calendar so we could have a full discussion of it
8 prior to next time we meet. And I'm really happy that we're having this conversation,
9 because the voters in District 4 need to be paying very close attention to what this Council
10 is doing regarding their ability to go out and vote and whether there are any issues of
11 disenfranchisement in that district. And so, Council President, as you know, you and I
12 have had a couple of conversations about this, where I had indicated to you that I heard
13 from several voters in District 4 who said that they had a difficult time voting while school
14 was open. Parking was an issue. These are all issues of disenfranchisement-- everything
15 from moving polling places to making it not easy for people to get to the polling places to
16 what happens when they get inside the polling place. So all of these issues are of extreme
17 importance to residents all over the County, but particularly in District 4, where this special
18 election is going to be held almost a year, exactly, to the day. It gives me a lot of
19 confidence that colleagues are bringing up very good points today. I think we should be
20 hearing from residents, and we have people here who are representing the NAACP and
21 the SCLC who have worked tirelessly for many, many years on behalf of the Voting Rights
22 Act and issues regarding voter disenfranchisement. I'm happy to see them here today. I
23 think this is a very, very important conversation that we're having. So whether or not we
24 make a decision today at the dais or whether we give ourselves, as Councilmember
25 Leventhal said, a couple of more weeks, I'm open to both. But to say that--I wanted to
26 make this point about absentee voting. Many, many Americans, especially new voters,
27 vote absentee, and so this is not something hard. It's not difficult. It's what a lot of people
28 do automatically now. I think it's up to the Board of Elections to make it easier for people
29 to obtain the information that they need to be able to vote absentee, and I think we're
30 going to see more and more people, as time goes by, voting absentee rather than going to
31 a polling place and standing in line to vote.

32
33 COUNCIL PRESIDENT ANDREWS:

34 OK. All right. We're going to wrap this up in just a minute, and we may put this off for a
35 couple of days, because we have the option of coming back on Thursday, since we're all
36 here on Thursday afternoon for committee meetings, and morning as well. Let me see if
37 we have a couple of other comments, and then we'll make a decision about when we take
38 this up--whether now or Thursday. Councilmember Trachtenberg.

39
40 COUNCILMEMBER TRACHTENBERG:

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1 Thank you, President Andrews. I think we would all agree that what we want to
2 accomplish here is optimal participation, and we might have a different interpretation how
3 that would occur, but for the record, I want to state that I think the April 21 date is a better
4 date. I have heard, through my office, from a number of community groups and a number
5 of constituents that live in District 4, and many of them have voiced concerns about the
6 spring break occurring and the fact that they're not going to be around. And I would also
7 remind my colleagues that last year, given what the level of participation was in both the
8 primary and special election, I don't think we saw an incredibly high number of absentee
9 ballots. I think most of the votes were cast at polling locations. And again, I know the
10 parking, as Valerie has raised, was a concern, but to me, that would be a logistical issue,
11 and I can't imagine that we can't come up with some way of trying to deal with that, and
12 perhaps having a little bit more time to address that is what's wisest. I am of the opinion
13 that the consolidation of the polling locations is a very bad idea because people are used
14 to locations in their neighborhoods. I can recall when I was on the ballot back in 2006, my
15 polling location had changed, and I can remember the confusion that many of my
16 neighbors had about that, even with notice, and my husband was one of those people that
17 went to the old polling location. Of course, he understood what the consequence would be
18 if he didn't get to the right polling location, so he got there. But the point is that, you know,
19 a postcard is a great reminder, but it's not going to be adequate because the participation
20 level is going to be low, and people are creatures of routine, and they're more likely to
21 show up at the old location rather than anything that's on a small postcard that they might
22 not have kept. They might have kept, but they might not have kept, so I'm going to
23 suggest that right now, I'm with the April 21 date for the primary and the May 19 date for
24 the general. I really feel we have to give the community whatever benefit they need in
25 order to get an optimal number to the poll, because this is a special election, the second
26 one in one year's time, and we've got to get more people participating.

27
28 COUNCIL PRESIDENT ANDREWS:

29 OK. Thank you, Councilmember Trachtenberg. We have two more comments, and then
30 what we're going to do is, we're going to --we'll hear from our colleagues, and then we're
31 going to schedule a Council session for, mostly likely, 1:00 on Thursday, which should
32 work, I think, for everybody given that, I think, we are all here for committee meetings on
33 Thursday, as well. So Councilmember Floreen, then Councilmember Elrich, and then we'll
34 continue with the rest of the agenda.

35
36 COUNCILMEMBER FLOREEN:

37 Thank you. Well, I think we are all of one mind that we want to encourage participation
38 and avoid the hassles. My suggestion is, and I don't--we're going to be--you're going to be
39 sending out a specimen ballot in any event, Margaret?

40
41 MARGARET JURGENSON:

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1 We're legally required to.

2
3 COUNCILMEMBER FLOREEN:

4 You're required to.

5
6 MARGARET JURGENSON:

7 So it would be before the primary and the general.

8
9 COUNCILMEMBER FLOREEN:

10 So why don't we--I would recommend that we ask the Board of Elections to send out an
11 absentee ballot with the specimen ballot. Why don't we make this easier for people?

12
13 MARGARET JURGENSON:

14 Excuse me. The specimen ballot is required to go out 10 days prior to the election, and
15 the deadline for absentee is 14 days.

16
17 COUNCILMEMBER FLOREEN:

18 14 days to be--

19
20 MARGARET JURGENSON:

21 It doesn't work.

22
23 COUNCILMEMBER FLOREEN:

24 14 days to be...

25
26 MARGARET JURGENSON:

27 14 days prior to the election.

28
29 COUNCILMEMBER FLOREEN:

30 Have to be what? Requested?

31
32 MARGARET JURGENSON:

33 Right. The timelines don't work.

34
35 COUNCILMEMBER FLOREEN:

36 Well, if you sent--but I can file--I can send in an absentee ballot,

37
38 MARGARET JURGENSON:

39 You can send an absentee ballot in up until eight days prior to--request it by mail.

40
41 COUNCILMEMBER FLOREEN:

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1 Right. But if we--if you made it available to me easily, it might be--it would be easier for me
2 to just go ahead and send it back. I'm not--what is the problem?

3
4 MARGARET JURGENSON:
5 Absentee request form?

6
7 COUNCILMEMBER FLOREEN:
8 No.

9
10 MARGARET JURGENSON:
11 No, I can't. I'm legally prohibited. The Board of Elections cannot mail out a ballot unless a
12 voter requests the ballot.

13
14 COUNCILMEMBER FLOREEN:
15 Is that --you cannot--

16
17 MARGARET JURGENSON:
18 They have to fill out an absentee request--

19
20 COUNCILMEMBER FLOREEN:
21 Is that a state law requirement?

22
23 MARGARET JURGENSON:
24 Yes, it is. Yes. Which controls the conduct of the County election.

25
26 COUNCILMEMBER FLOREEN:
27 So that precludes our opportunity to send one out unrequested.

28
29 MARGARET JURGENSON:
30 Correct.

31
32 COUNCILMEMBER FLOREEN:
33 OK. Well, that's a state law initiative for us, then. But, uh...

34
35 COUNCIL PRESIDENT ANDREWS:
36 Another day.

37
38 COUNCILMEMBER FLOREEN:
39 Well, yeah, because I do think that is something that we need to look into to make that
40 more accessible. But in any event, I would just add for us to look at, when we come back
41 then, the issue of consolidation. I think we should--I'm going to move an amendment to

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1 the resolution that's before us that would state that the Board of Elections must use the
2 same polling places that were used in the 2008 Council special election, to the extent that
3 they are available, and that would make it clear that it is our intention, at least, to not
4 encourage or support a consolidation of polling places. So that's my motion.

5
6 COUNCIL PRESIDENT ANDREWS:

7 OK. All right. And you'll move that when we come back on Thursday.

8
9 COUNCILMEMBER FLOREEN:

10 Mm-hmm. I'm moving it now, just as Miss Ervin--

11
12 COUNCILMEMBER TRACHTENBERG:

13 Second.

14
15 COUNCIL PRESIDENT ANDREWS:

16 OK. It's moved by Councilmember Floreen and seconded by Councilmember
17 Trachtenberg.

18
19 COUNCILMEMBER LEVENTHAL:

20 Can the motion be restated, please?

21
22 COUNCILMEMBER FLOREEN:

23 The Board of Elections must use the same polling places that were used in the 2008
24 Council special elections--

25
26 COUNCILMEMBER LEVENTHAL:

27 I'm sorry. It's not in order.

28
29 COUNCILMEMBER FLOREEN:

30 To the extent they are available.

31
32 COUNCILMEMBER LEVENTHAL:

33 We have a motion before the Council right now.

34
35 COUNCIL PRESIDENT ANDREWS:

36 Yeah, that's right. We do.

37
38 COUNCILMEMBER FLOREEN:

39 Well, this is in addition.

40
41 COUNCIL PRESIDENT ANDREWS:



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1 It's an amendment, but we haven't resolved the--I think it would be best if we take all of
2 that up on Thursday, which is just two days away. It's clear that there's a motion there. We
3 need--I think it would be helpful to hear from our lawyers about what the legal impact of
4 that would be, but certainly, it's something we can take up on Thursday and express, if not
5 a legally binding action, at least the sense of the Council.

6
7 COUNCILMEMBER LEVENTHAL:
8 Mr. President.

9
10 COUNCIL PRESIDENT ANDREWS:
11 Yes.

12
13 COUNCILMEMBER LEVENTHAL:
14 A motion to table is nondebtable, If it is acceptable to you, it seems we've vetted the
15 issues. We're all being taken by surprise. We've gotten communications from the Board of
16 Education that some of us, including myself, have not seen. We got a communication from
17 the Board of Elections which was just circulated and therefore I move to table this
18 discussion to Thursday at 1 PM.

19
20 COUNCIL PRESIDENT ANDREWS:
21 And that's fine, and we shall--

22
23 COUNCIL VICE PRESIDENT BERLINER:
24 I second.

25
26 COUNCIL PRESIDENT ANDREWS:
27 Good. All right. All those in favor of tabling until 1:00 on Thursday, raise your hand. All
28 right. That is Councilmember Trachtenberg, Councilmember Floreen, myself,
29 Councilmember Berliner, Councilmember Ervin, Councilmember Leventhal.
30 Councilmember Elrich opposed. But I will--I will give you the chance to say something,
31 since you had your light on and wanted to address it.

32
33 COUNCILMEMBER ELRICH:
34 I would just like a couple of bits of information. One is, how many schools, out of the total
35 number of polling places, are we dealing with? And can--can you look at the parking
36 situation-- OK. Can you look at the parking situation and let me know, is there another
37 way to deal with the parking? In other words, teachers come in. Their cars are there all
38 day. Could we just let people park behind the cars that are there and go in and out and
39 vote? Because the voting is, you know, a 10- or 15-minute process. You know, those of us
40 who are in, you know, schools, our cars were there from when I drove in in the morning to



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1 when I left in the afternoon. So there's no reason why we couldn't use, double use, the
2 parking lots during the time the school's open, because teacher cars aren't moving.

3
4 COUNCIL PRESIDENT ANDREWS:

5 All right. Are there any other questions that Councilmembers have that they want research
6 done on between now and Thursday?

7
8 COUNCILMEMBER LEVENTHAL:

9 There may be, Mr. President, and we will have a day or so to communicate with the Board
10 of Elections, the Board of Education, with the community. What I--if I could, Mr. President,
11 I'd--since we will meet on Thursday, it would be very useful if those media that are able to
12 communicate today and tomorrow indicate to the public that Councilmembers are really
13 interested to hear people's feedback on this topic, because on the one hand, having an
14 election on a school day or school days is a problem, on the other hand, the issue has
15 been raised about whether to do this in the middle of spring break, and I'd like to get more
16 feedback. I don't feel that the public in District 4 has been thoroughly engaged on this, and
17 I'd love to hear from them and get their input.

18
19 COUNCIL PRESIDENT ANDREWS:

20 Very good. Let the word go forth. All right. We're going to move on to the rest of the
21 agenda, and we'll be back to take that item up, special election, at 1:00 on Thursday. Our
22 next item is the introduction of bills. Expedited bill 3-09, Local Small Business Reserve
23 Program--Revisions, sponsored by the Council President at the request of the County
24 Executive. Public Hearing is scheduled for March 3 at 1:30 PM. Without--do you have a
25 comment? Yes, Councilmember Leventhal.

26
27 COUNCILMEMBER LEVENTHAL:

28 Yeah. This is for staff, very briefly. The Local Small Business Reserve Program sunsets in
29 2010, and I wonder, if we're going to change the thresholds in the program, whether we
30 could kill two birds with one stone and extend the sunset date in the same bill, and if that
31 were consistent with the hearing notice. If staff could get back to me on that question, we
32 could just take care of that all at once.

33
34 COUNCIL PRESIDENT ANDREWS:

35 OK.

36
37 ROBERT DRUMMER:

38 Do you want an answer now?

39
40 COUNCILMEMBER LEVENTHAL:

41 Yeah.

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1 ROBERT DRUMMER:

2 The sunset is
3 December 31, 2009.

4 COUNCILMEMBER LEVENTHAL:
5 Exactly. Pardon me. My mistake.

6 ROBERT DRUMMER:

7 The bill is broad enough, if the Council wants to amend it, to extend it. I mean, the title of
8 the bill is broad enough to do that, but that's not in the bill.

9 COUNCILMEMBER LEVENTHAL:

10 Well, could we have an amendment drafted to that effect so we could accomplish the
11 extension of the effective date of the program at the same time as we change the
12 threshold?

13 ROBERT DRUMMER:

14 Yeah. We can bring an amendment to committee for that, sure.

15 COUNCILMEMBER LEVENTHAL:

16 Let's say, another three years.

17 ROBERT DRUMMER:

18 Sure. We can do that.

19 COUNCILMEMBER LEVENTHAL:

20 Thank you.

21 COUNCIL PRESIDENT ANDREWS:

22 All right. Without opposition, the bill is introduced. Next-- Expedited Bill 4-09, Development
23 Impact Tax--Deferral, sponsored by the Council President at the request of the County
24 Executive. Public Hearing is scheduled for March 3, 2009, at 1:30. Without objection, the
25 bill is introduced. And Expedited Bill 5-09, Permit Fees --New Construction--Deferral,
26 sponsored by the Council President at the request of the County Executive. Public
27 Hearing is scheduled for March 3, 2009, at 1:30. Without objection, the bill is introduced,
28 as well. Next, calls of bill for final reading, and there are... no bills for final reading today.
29 We have miscellaneous business. Action--resolution to extend the expiration date until
30 August 31, 2009, of Bill 19-07, Eating and Drinking Establishments-- Nutrition Labeling.
31 And that requires a vote of a majority of those present. All those in favor of the action
32 which extends the expiration date for that measure--



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1
2 COUNCILMEMBER LEVENTHAL:

3 It has to be moved, so I will move that the Council extend the expiration date of this bill to
4 August 31.

5
6 COUNCILMEMBER ELRICH:
7 Second.

8
9 COUNCIL PRESIDENT ANDREWS:

10 OK. That's moved by Councilmember Leventhal, seconded by Councilmember Elrich. All
11 those in favor of extending the resolution date for Bill 19-07, please raise your hand. That
12 is unanimous among those present, who are Councilmember Elrich, Councilmember
13 Trachtenberg, Councilmember Floreen, myself, Council Vice President Berliner, and
14 Councilmember Leventhal. Councilmember Knapp has to attend to a sick child, which is
15 why he is not here right now. All right--his own child. District Council session. Introduction.
16 Subdivision Regulation Amendment 09-01, Adequate Public Facilities--Validity Period,
17 sponsored by the Council President at the request of the County Executive. The action is
18 a resolution to establish a public hearing for March 17, '09, at 1:30. Is there a--

19
20 COUNCILMEMBER LEVENTHAL:
21 Let's establish a public hearing.

22
23 COUNCIL PRESIDENT ANDREWS:
24 There's a motion for that-- Councilmember Leventhal. Seconded by... Who want to
25 second?

26
27 COUNCILMEMBER FLOREEN:
28 Second.

29
30 COUNCIL PRESIDENT ANDREWS:
31 Councilmember Floreen. All those in favor of establishing a public hearing on Amendment
32 9-01, Subdivision Regulation, please raise your hand. That is unanimous--Councilmember
33 Elrich, Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice
34 President Berliner, and Councilmember Leventhal. The public hearing is scheduled. Next-
35 -action on Zoning Text Amendment 8-17, Wheaton Central Business Districts--
36 Boundaries. PHED Committee has recommended approval, and Councilmember Knapp,
37 who chairs PHED Committee, is not here right now, but is another member of the
38 committee able to make the report for the committee?

39
40 COUNCILMEMBER FLOREEN:

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1 All right. Well, there's not too much to be said. We...let's see here. We looked at it. It
2 makes perfect sense.

3
4 COUNCIL PRESIDENT ANDREWS:

5 OK. Well--

6
7 COUNCILMEMBER FLOREEN:

8 Jeff is here. Speak to it?
9

10 JEFF ZYONTZ:

11 This ZTA gives a new definition for the Wheaton boundary. There's a map in the back of
12 the resolution that conforms to the area described by metes and bounds. The resolution is
13 then referenced in the Zoning Text Amendment. This is to conform the area described by
14 the recent Wheaton Master Plan amendment and would allow the Council to adopt
15 Central Business District Zoning in this area.

16
17 COUNCIL PRESIDENT ANDREWS:

18 OK. Councilmember Leventhal, your light is on. Do you have a question?
19

20 COUNCILMEMBER LEVENTHAL:

21 No.
22

23 COUNCIL PRESIDENT ANDREWS:

24 OK. All right. All those in favor of the action on Zoning Text Amendment 8-17. This is a roll
25 call vote. Clerk, please call the roll.
26

27 CRYSTAL BROCKINGTON:

28 Mr. Elrich.
29

30 COUNCILMEMBER ELRICH:

31 Yes.
32

33 CRYSTAL BROCKINGTON:

34 Miss Trachtenberg.
35

36 COUNCILMEMBER TRACHTENBERG:

37 Yes.
38

39 CRYSTAL BROCKINGTON:

40 Miss Floreen.
41

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1 COUNCILMEMBER FLOREEN:

2 Yes.

4 CRYSTAL BROCKINGTON:

5 Mr. Leventhal.

7 COUNCILMEMBER LEVENTHAL:

8 Yes.

10 CRYSTAL BROCKINGTON:

11 Miss Ervin.

13 COUNCILMEMBER ERVIN:

14 Yes.

16 CRYSTAL BROCKINGTON:

17 Mr. Berliner.

19 COUNCIL VICE PRESIDENT BERLINER:

20 Yes.

22 CRYSTAL BROCKINGTON:

23 Mr. Andrews.

25 COUNCIL PRESIDENT ANDREWS:

26 Yes. The amendment passes, 7-0. All right. Next is action on spending affordability
27 guidelines for the FY10 operating budget. The MFP Committee recommendations are
28 before us, and the chair of the committee, Councilmember Trachtenberg, has the floor.

30 COUNCILMEMBER TRACHTENBERG:

31 OK. Thank you, President Andrews. Well, this is a conversation that we've had, clearly,
32 every year, certainly since I've been here. And I would remind my colleagues as we begin
33 the conversation this morning that in the two years that I've been here, we've actually had
34 six different configurations of the committee that I chair, and every one of those committee
35 configurations, everyone thought what we needed to do was really change the process by
36 which we were spending--we were setting the spending affordability guidelines. And it
37 took a lot of time to get to the point where we are today. After a lot of consultation with our
38 own staff and with the finance folks across the way, we came up with a new way, new
39 formula, for setting the guideline, which of course the Council committed to, back a few
40 months ago. So what I'm providing to you this morning is very much a fruit of our labor
41 around this issue. We clearly were looking to make the process more relevant to the



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1 budget that's actually transmitted to us in March, and I believe that while this moves us
2 closer to where we need to be, there's consensus within the current MFP Committee that
3 we might indeed have to tweak what we have begun, but it's hard to know when and by
4 what measure. So I would ask for my colleagues to take that into consideration as I make
5 the recommendation. We discussed this within the committee yesterday afternoon, and
6 the recommendation is as follows--that the ceiling on property taxes should be at the
7 Charter limit, and it would be achieved entirely by giving a credit. The consensus was that
8 that was the progressive step to take, and it was a unanimous recommendation. In
9 accordance with the new method, the Council would approve--did approve on January 27
10 that the ceiling on the Aggregate Operating Budget would be 5.9% of estimated personal
11 income, which basically permits a 4.7% increase over the FY09 approved AOB, but it's
12 important to note at this point --and the committee noted it yesterday, as well--that it's not
13 likely that that would be the amount that the Council would approve in May. That number
14 could be a lot lower than that, and what we'd like to state for the record is that that 4.7%
15 increase is simply a ceiling--a guideline, but a ceiling. Clearly, we're awaiting other
16 information from both the state and even, really, information germane to the federal
17 stimulus package, so we'd like to just use the 4.7, recognizing that indeed it might be
18 adjusted once we've got a better idea of what revenue numbers actually look like, and that
19 should be shortly. The allocation of the Aggregate Operating Budget would be as follows--
20 that the debt service would be based on most recent schedule. There is a slight change
21 from the Park and Planning number that was on the table. It's been changed at this point
22 to 5.0 million, rather than to 4.7. The PAYGO that the Council's target is 10% of the FY10
23 bond funding, which is 32 million. Again, remember that the number last week was
24 changed, adjusted to 320 million. The current revenue for specific projects is the amount
25 from the Executive's January 15 recommended Capital Budget. And the agency
26 allocations--the remainder of the AOB is allocated to each agency in the same percentage
27 as the Council approved in FY09. The final part of the recommendation relates to targets
28 for community grants. Again, the discussion centered around whether or not we should
29 set a target for the Council, and perhaps one for the Executive, as well, which is actually
30 what we did do last year. Myself and Councilmember Ervin recommended that there be an
31 overall spending allocation for community grants in FY10 of 5 million, with the Council
32 grants totaling 2.5 million and the Executive branch totaling another 2.5 million.
33 Councilmember Andrews, our Council President, took the staff recommendation of
34 providing a total of 4 million, with the Council grants totaling 2 and the Executive
35 community grants totaling another 2. I'm sure the Council President will speak to his
36 position on this. It was my opinion, and Councilmember Ervin's, that clearly, we, again, are
37 still waiting on revenue numbers, but we also recognize that community needs are
38 growing, and we thought it was equitable to come up with the \$5 million number at this
39 time, giving equal amounts to both branches but recognizing that last year, what was
40 actually spent in the final budget document was 5.3 million. So we're not going as high as
41 that, but we didn't want to make a cut of about 15% to what we did last year and over 30%

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1 reduction to the Executive Branch. We didn't think that that was really going to fall in line
2 with the needs in the community. And the other qualifier that we brought to the
3 recommendation is that we ask that specific language--and again, it was Mr. Sherer's
4 recommendation and Miss--and Peggy Fitzgerald-Bare's recommendation that we could
5 actually use some of the language that had actually appeared this year in the 2010
6 Council grant application package so that we would prioritize the funding of grants around
7 emergency assistance to the neediest members in the community. So that in total is the
8 recommendation of the MFP Committee.

9
10 COUNCIL PRESIDENT ANDREWS:

11 Thank you, Councilmember Trachtenberg. And I think reasonable people can disagree on
12 the amount that was developed on the community grants. My interest is in seeing as large
13 a percentage of the community grants this year go to emergency assistance, and I think
14 you could have an increase in the percentage of the money that goes to that. In fact, I
15 think you could have an increase in the money that goes to that this year compared to last
16 year and still reduce the overall total. But I think that there-- it's not a huge difference, and
17 I'm not going to make a motion on it. Let me see who has lights on. Councilmember
18 Leventhal and Councilmember Elrich.

19
20 COUNCILMEMBER LEVENTHAL:

21 I just wanted to thank the committee for its discussion on the community grants. Peggy
22 Fitzgerald-Bare advised me of the conversation, and I support the committee's work and
23 appreciate the work of its chair and all the members.

24
25 COUNCIL PRESIDENT ANDREWS:

26 Thank you, Councilmember Leventhal. Councilmember Elrich.

27
28 COUNCILMEMBER ELRICH:

29 When Duchy was speaking, I thought she said that we were achieving this by credit, but it
30 appears to me that what we're doing is achieving this by reducing the tax rate.

31
32 COUNCIL PRESIDENT ANDREWS:

33 No. It's a credit.

34
35 COUNCILMEMBER TRACHTENBERG:

36 No. It's a credit.

37
38 COUNCILMEMBER ELRICH:

39 This...this, where it says "reducing the property tax rate," is not applied? On page 2 of the
40 background, where it says "The ceiling on property tax revenues excluding the self-

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1 supporting parking lot districts, at the staff estimate of the Charter limit achieved entirely
2 by reducing the property tax rate."

3
4 CHARLES SHERER:

5 That was what you considered at the public hearing. But if you go to the Action clause
6 below that, Action clause number 1, it says, at the Charter limit achieved entirely by giving
7 an income tax offset credit. It's on the Action clause that you have to focus.

8
9 COUNCILMEMBER ELRICH:

10 I'm looking at an Action clause, and it says, "achieved by reducing property tax rate." Am I
11 looking at the wrong one?

12
13 CHARLES SHERER:

14 Well, you probably don't have the addendum. At least, you're not looking at the
15 addendum.

16
17 COUNCILMEMBER TRACHTENBERG:

18 Which is what we...

19
20 COUNCIL PRESIDENT ANDREWS:

21 Here it is.

22
23 COUNCILMEMBER TRACHTENBERG:

24 Here.

25
26 COUNCILMEMBER ELRICH:

27 Now am I looking at the addendum?

28
29 CHARLES SHERER:

30 The addendum reflects the committee's decision, which was made yesterday.

31
32 COUNCILMEMBER ELRICH:

33 OK. Then I'm fine if you did it by reducing--by the credit.

34
35 COUNCILMEMBER TRACHTENBERG:

36 Yes, we did.

37
38 COUNCIL PRESIDENT ANDREWS:

39 Thank you. All right. I don't see any other questions or comments, so we're ready, then, to
40 vote on the recommendations from the MFP committee regarding the resolution to
41 approve spending affordability guidelines for the FY10 Operating Budget. All those in

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1 favor of the committee's recommendations, please raise your hand. All right. This is a vote
2 in favor of the committee recommendations. OK. All right. That's unanimous among those
3 present. That's Councilmember Elrich, Councilmember Trachtenberg, Councilmember
4 Floreen, Council Vice President Berliner, Councilmember Ervin, and Councilmember
5 Leventhal. They are approved 7-0. And we will now go the sixth floor, but we need a first
6 for a proposed-- we are scheduled to have a closed session for the purpose of consulting
7 with counsel. I need a motion that cites...

8
9 COUNCILMEMBER TRACHTENBERG:

10 So moved.

11
12 COUNCILMEMBER FLOREEN:

13 Second.

14
15 COUNCIL PRESIDENT ANDREWS:

16 ...what this is about. Would you like to cite what is there?

17
18 COUNCILMEMBER FLOREEN:

19 You want to read this?

20
21 COUNCILMEMBER TRACHTENBERG:

22 OK. OK. Let's see. Where is it? Proposed closed session for the purpose of consulting
23 with counsel to obtain legal advice regarding pending or potential litigation, pursuant to
24 Maryland Code, State Government Article, 10-508, Section (a) (7) and (8). Topic is
25 bankruptcy litigation.

26
27 COUNCIL PRESIDENT ANDREWS:

28 OK. Thank you. That's a motion by Councilmember Trachtenberg. Is there a second?

29
30 COUNCILMEMBER FLOREEN:

31 Second.

32
33 COUNCIL PRESIDENT ANDREWS:

34 Seconded by Councilmember Floreen. All those in favor of going to closed session for the
35 purpose described, please raise your hand. That is unanimous-- Councilmember Elrich,
36 Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice President
37 Berliner, Councilmember Ervin, Councilmember Leventhal. That's 7-0. We will meet
38 downstairs on the sixth floor. Thank you all.

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TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner, Vice President

Councilmember Marc Elrich

Councilmember Valerie Ervin

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Duchy Trachtenberg

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1 COUNCIL PRESIDENT ANDREWS:

2 Good afternoon, everybody. Welcome to the County Council session. We have three
3 public hearings before we have our meeting at 2:00 with the state and Park and Planning
4 and the Department of Environmental Protection about the environmental mitigation
5 regarding the ICC. So...one of the public hearings requires action at the end, so I expect
6 we'll have a quorum up here by then. But the first public hearing is on Expedited Bill 2-09,
7 Property Credits - Renewable Energy - Amendments. This bill would establish a cap on
8 the credit received for certain solar or geothermal energy devices, require the Department
9 of Permitting Services to accept certain certifications for certain devices, and generally
10 amend the law relating to the renewable energy property tax credit. Persons wishing to
11 submit additional material for the Council's consideration should do so before the close of
12 business on Thursday, February 19, 2009. A Management and Fiscal Policy work session
13 is tentatively scheduled for Monday, February 23, at 2:00, and please call 240-777-7900
14 for information. There are no speakers for this bill, so this hearing is closed, or over, and it
15 will go to committee for the committee's consideration. The next public hearing is agenda
16 item 10, and that is a public hearing on a special appropriation to the Maryland-National
17 Capital Park and Planning Commission's FY09 capital budget and amendment to the
18 FY09-14 Capital Improvement Program - \$87,345,000 for SilverPlace Headquarters
19 Mixed-Use Project. Persons wishing to submit additional material for the Council's
20 consideration should do so before the close of business on Friday, February 13, 2009,
21 and a PHED Committee work session will be scheduled at a later date.

22
23 MARLENE MICHAELSON:

24 It --

25
26 COUNCIL PRESIDENT ANDREWS:

27 Has it been scheduled?

28
29 MARLENE MICHAELSON:

30 No, no, it hasn't. I just wanted to make sure you knew that.

31
32 COUNCIL PRESIDENT ANDREWS:

33 At a later date. OK. Please call 240-777-7900 for information. There are two speakers
34 signed up for this hearing - Royce Hanson, representing the Montgomery County Planning
35 Board, and Harry Lerch, with 8711 Georgia Avenue Parking Lot LLC, Guardian Realty. So
36 please join us at the table, please, and as you know, you each have three minutes, and
37 please introduce yourselves for those listening in and watching.

38
39 ROYCE HANSON:

40 Thank you, Mr. President. I'm Royce Hanson. I'm chairman of the Montgomery County
41 Planning Board. Our written testimony provides information on the history of this project in

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1 greater detail with regard to the appropriation request. I want to stress just seven points in
2 my three minutes. This special appropriation of \$87,345,000 is for the design and
3 construction of the public portion of the SilverPlace project, a new green Montgomery
4 County Headquarters Building for the Park and Planning Commission, and a new public
5 park. The building will meet LEED Gold standards. The headquarters building, and the
6 entire SilverPlace plan, is a result of a Charrette conducted last June. Over 100 people
7 participated in the design of the project, which has received the support of the community.
8 In addition to the new headquarters and park, the second phase of the project will include
9 300 housing units on the remaining land, of which at last 30% will meet county standards
10 for affordability. The Planning Board is committed to the development of this portion of the
11 site in conformance with the Charrette plan, and it will be developed by a private builder.
12 Third, the 159,000-square-foot headquarters building will replace the aged, inefficient, and
13 inadequate building and rented office space with an exemplary green building. The
14 headquarters will be constructed in two phases. First, the office tower will be built at
15 Georgia Avenue and Planning Place. Occupants of the current MRO will move into the
16 tower, and the existing building will be demolished and replaced by the public wing of the
17 headquarters, which also includes public function areas, information services, and space
18 for a daycare facility. Fifth, the construction site -- I'm sorry. The construction cost
19 estimate is a result of review by two independent cost estimators. Their estimates were
20 within 4% of each other. We believe the cost estimate is adequate and conservative. We'll
21 engage a contractor for the building under a guaranteed maximum price contract, to build
22 it in at the lowest possible price. The PDF -- our sixth point is that the PDF proposes
23 funding for the project with certificates of participation, which at this time appear to be the
24 best approach. Our secretary treasurer, who is here and can respond to questions if you
25 have them about this, continues to work with the County's Office of Management and
26 Budget, its Department of Finance, our bond counsel, and financial advisors to structure a
27 financial mechanism that will have as little effect as possible on the county's fiscal
28 position. And finally, this PDF, as the Council knows, is the result of a 10-year process
29 that has certainly had its twists and turns, but the time has come to act. Our existing
30 building is worn out. It's inefficient, crowded, and poorly serves the public and our
31 employees. We think we've developed a well-thought-out plan that has broad public
32 support that will produce an exemplary project that can demonstrate the kind of
33 development we should promote in our urban centers, and we urgently request your
34 approval.

35
36 COUNCIL PRESIDENT ANDREWS:
37 Thank you. Mr. Lerch.

38
39 HARRY LERCH:
40 Good afternoon. I'm Harry Lerch. I'm not talking in opposition to Dr. Hanson, but
41 presenting an alternative. I'm with the law firm of Lerch, Early and Brewer. I'm honored to

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1 represent Guardian Realty today. I'm accompanied by Brian Lang and architect George
2 Dove. Our art designer Martha Jackson-Jarvis just got off the plane and couldn't be here.
3 Guardian's new building at 8711 Georgia Avenue is a viable alternative headquarters to
4 the SilverPlace proposal which we wanted to bring to your attention, which can save years
5 of time and millions of dollars of the county's taxpayers. Guardian's 152,000-square-foot
6 office tower will be constructed just one-half block south of Park and Planning's location.
7 We already have preliminary plan approval, project plan approval, and site plan approval.
8 During the process, the project received rave reviews for its overall design. It, too, will be
9 a green building, designed by award-winning architect George Dove, with a public amenity
10 arts plaza conceived by local artist Martha Jackson Jarvis serving as a beacon in an
11 urban oasis in this area of Silver Spring. Since the Board announced the termination of its
12 development partnership in November, Guardian has met with numerous individuals,
13 including Dr. Hanson and the SilverPlace Project team, about the possibility of relocating
14 Park and Planning's headquarters to our building. They have each been very responsive
15 to us and very courteous. Their challenge to us was that Guardian's project, to be feasible
16 to them, must be faster, better, and most cost effective for the taxpayers than SilverPlace.
17 Guardian's proposal meets all three of these criteria. First, the Guardian building will be
18 faster -- probably two or three years faster. Anyone who has spent time in the existing
19 headquarters building knows that every day counts, and we agree with Dr. Hanson on
20 that. Guardian could commence construction within five months, with occupancy projected
21 as soon as mid 2011. Second, Guardian's proposal is more cost effective. Guardian is
22 offering alternative lease and purchase options, including purchase at the time of
23 occupancy or leasing with the sole right to purchase or outright leasing. None would
24 require a capital outlay today. Each results in substantial savings for taxpayers when
25 compared to the appropriate request now before -- appropriation request now before you.
26 Third. Guardian would deliver what we feel would be a superior building. In answer to
27 whether Guardian can provide a better building than SilverPlace, our answer is an
28 emphatic, "Yes, we can."

29
30 COUNCIL PRESIDENT ANDREWS:

31 You'll have to end on that emphatic note.

32
33 HARRY LERCH:

34 Thank you.

35
36 COUNCIL PRESIDENT ANDREWS:

37 But we'll read the rest of your testimony, if you have written testimony you want to give us.

38
39 HARRY LERCH:

40 Yes. We've already submitted it.

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1 COUNCIL PRESIDENT ANDREWS:

2 OK.

4 HARRY LERCH:

5 And I'll be happy to answer any questions.

7 COUNCIL PRESIDENT ANDREWS:

8 All right. OK. Council -- I'm going to go first to the Council Vice President, and then I will
9 go to Councilmember Floreen and then Councilmember Elrich.

11 COUNCIL VICE PRESIDENT BERLINER:

12 And I just want to give Dr. Hanson an opportunity to respond to that testimony and tell us
13 why, in your judgment, he is not correct.

15 ROYCE HANSON:

16 We have really very little idea of whether he's correct. We have a submission that was
17 sent to us which makes the same assertions that Mr. Lerch has made, and the proof
18 offered is a bar chart. And I have to ask you, if the Park and Planning Commission came
19 to you and said, "We think that we can do this better, faster, cheaper," and you said, "Well,
20 how can you demonstrate that?" and we said, "Well, trust us, we're developers," would
21 you? If all we offered was a bar chart? I mean, this is the substance of -- we've asked for
22 information. We've shared all of the information that we have on our costs, our
23 programmer requirements, with Mr. Lerch's clients. We asked for something we could
24 evaluate and actually do financial and other comparisons, and this is what we got.

26 COUNCIL VICE PRESIDENT BERLINER:

27 Mr. Lerch, do you want to respond to that? It seems a reasonable posture for the chair to
28 take -- that if he's going to compare something, he has to have enough to compare it with.
29 You -- is there information that you are intending to provide the chairman so that --

31 HARRY LERCH:

32 We can provide --

34 COUNCIL PRESIDENT ANDREWS:

35 Press the button near you.

37 HARRY LERCH:

38 I'm sorry. We certainly can provide additional information. We'll do so.

40 COUNCIL VICE PRESIDENT BERLINER:

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1 OK. I would be grateful if the chairman would identify in writing what information he
2 requires in order to make his analysis, to the extent to which you have not done so before,
3 and that you provide it to him so that he can determine whether or not this is--

4
5 ROYCE HANSON:

6 If I could ask Mr. Riley and Mr. Hertz to come up, they can tell you what we asked them to
7 provide.

8
9 COUNCIL VICE PRESIDENT BERLINER:

10 Well, no. We don't need to take our time now. If you would provide that to the Council and
11 provide it to Mr. --

12
13 ROYCE HANSON:

14 It's already been provided.

15
16 COUNCIL VICE PRESIDENT BERLINER:

17 OK. So, Mr. Lerch, you have your marching orders. Respond so that everybody is in a
18 position to do this comparative analysis you've asked us to make.

19
20 HARRY LERCH:

21 Thank you.

22
23 COUNCIL PRESIDENT ANDREWS:

24 Thank you. Councilmember Floreen.

25
26 COUNCILMEMBER FLOREEN:

27 Thank you. Marlene, you're staffing this, right? When we get to committee meeting, I know
28 that -- I've heard from the Executive Staff over the -- with some observations about the
29 cost of this. Could we get their more detailed comments?

30
31 MARLENE MICHAELSON:

32 Yeah. We've asked for their recommendation, and I understand it's forthcoming, but we
33 don't have it yet.

34
35 COUNCILMEMBER FLOREEN:

36 OK. But if we could get that... Also, when we get to reviewing this, understanding the
37 market for the COPs financing proposal -- I've asked this question a couple of times, but
38 given the current fiscal situation and all, I would appreciate a more thorough analysis of
39 that. And then finally, I don't know if the rest of the Council is aware of this -- yesterday at
40 the PHED Committee, the issue of a merger between the Parks Department and
41 Recreation Department, or some functions, was discussed, and we've asked for a

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1 report...end of the month? Next month. It may proceed. I don't know. But what I don't
2 know is its impact on this -- the facilities project here. I hadn't appreciated the extent to
3 which this included Parks elements in this building. And I would also like to know what is --
4 what would happen with Parkside under the overall scenario. I just hadn't focused on that
5 part.

6
7 ROYCE HANSON:
8 We'll be prepared. We have thought through that.

9
10 COUNCILMEMBER FLOREEN:
11 Honest to gosh, I hadn't thought about that till I saw that.

12
13 ROYCE HANSON:
14 Yeah. We've spent a long time thinking about that, and we'll be prepared at the PHED
15 Committee to discuss that with you.

16
17 COUNCILMEMBER FLOREEN:
18 Yeah. So I would like to know how all those moving parts are affected. Thank you.

19
20 COUNCIL PRESIDENT ANDREWS:
21 Thank you. Councilmember Elrich.

22
23 COUNCILMEMBER ELRICH:
24 I hope if you have a response to that, that you share it with the other proposals so that we
25 can have apples-to-apples comparison. If there's a shrinkage of square footage in one
26 project or a change in use, it would be nice to know so that we've -- if the other -- if the
27 applicant or the other proposal is competitive, we can actually compare it on the same
28 basis. I would not take anything to faith on a bar chart, but it's also hard not to look at the
29 numbers and take them seriously, and if the numbers are real and they can deliver a
30 product in the price range that they've talked about, I think it would be wrong of us not to
31 give that really, really serious consideration, so I urge the other party, if you are intent on
32 this, to be able to come in with a proposal that is absolutely credible that, as some people
33 would say, you could take to the bank, so that in fact we can take it to the bank, if that's
34 the direction we want to go in. But I'm very open-minded to doing this, but I need, as the
35 chairman suggested, something more than a bar chart. You make a great case, but it's
36 got to be fleshed out.

37
38 HARRY LERCH:
39 Thank you.

40
41 COUNCIL PRESIDENT ANDREWS:

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1 OK. Thank you. That concludes the questions for the public hearing, and thank you all.
2 That ends this public hearing, and now our final public hearing of the afternoon. We have
3 a long public hearing this evening, as well. Good afternoon, ladies and gentlemen. This is
4 a public hearing on a supplemental appropriation to the County government's FY09
5 capital budget, amendment to the FY09-14 Capital Improvements Program for the
6 Department of Transportation - \$250,000 for bus stop improvements. Action is scheduled
7 immediately following this hearing. There are no speakers for this hearing, and the T&E
8 Committee recommendation, I think, is available, regarding this item, which is a
9 supplemental appropriation -- 250,000, I think. Do you want indicate what the committee's
10 recommendation is, Councilmember Floreen?

11
12 COUNCILMEMBER FLOREEN:

13 Yes. The committee fully supported this initiative. It's spending state aid for bus stop
14 improvements, so who can be opposed to that?

15
16 COUNCIL PRESIDENT ANDREWS:

17 OK. There is a --

18
19 COUNCILMEMBER FLOREEN:

20 And Mr. Orlin has a statement.

21
22 COUNCIL PRESIDENT ANDREWS:

23 Is there a question? Yes. Mr. Orlin.

24
25 GLENN ORLIN:

26 Just a clarification. You have an addendum today for this item, agenda item 11. The
27 committee is making its recommendation. We also noted that we needed just to add some
28 language on the PDF, which is on circle 10 behind the addendum, which just identifies
29 what this work is that the state is doing so it's included on the Project Description Form.
30 So what you'd be adopting would be the resolution sent over with the Executive, but with
31 this version of the PDF attached, not the one that's in the packet -- the main packet.

32
33 COUNCIL PRESIDENT ANDREWS:

34 Thank you. All right. I don't see any questions or comments from colleagues, so all those
35 in favor of this supplemental appropriation of \$250,000 for bus stop improvements, with
36 the source being state aid, please raise your hand. That is unanimous among those
37 present -- Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen,
38 myself, Council Vice President Berliner, Councilmember Leventhal, and Councilmember
39 Ervin. That's 7-0. There we go. All right. OK. And we're right on time. Good. All right. Our
40 final item for this afternoon is a follow-up discussion with state -- not yet -- county, and
41 Planning Board officials to review the state's plan to mitigate environmental impacts

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1 related to the Intercounty Connector. In September of 2007, the Council had a session
2 with the same organizations to talk about what the plans were for environmental mitigation
3 regarding the ICC, and this is to look at how it's going and what the additional plans are
4 regarding it, since the construction is well under way and we now have experience in what
5 is occurring. The Planning Board has been meeting regularly, or its work group is meeting
6 regularly, about this, and there is a document that was provided in the packet that Glenn
7 Orlin put together for this session, which is agenda item 12. If you look on circles -- on the
8 back half, basically, of the packet, circles 10 through 18, I think that's a good taking-off
9 point for this discussion. What is there is a ICC status report number 17, Special
10 Protection Area Activities. This deals with one important aspect of mitigation regarding the
11 Intercounty Connector, because the Intercounty Connector goes through two Special
12 Protection Areas -- the Upper Rock Creek Special Protection Area and the Upper Paint
13 Branch Special Protection Area -- and there's been a lot of concern about the impact on
14 those areas. And so I think that the document that's attached to the packet, which was
15 considered by the Planning Board a couple of weeks ago -- January 22 it went up to the
16 Planning Board. I think the meeting was on the 29th. Is that right? OK. So about 10 days
17 ago. It lists -- provides some background and then reviews the 12 comments that the
18 Planning Board had, I think in combination with our Department of Environmental
19 Protection, to the state regarding the Special Protection Areas that were sent up as of
20 February 2008, and there is concern that the requests have not been met, in some cases,
21 and we have a chance now to really go through this in a rigorous way, or thorough way,
22 with some specificity and some experience. So with that, I'm going to see if Glenn Orlin
23 wants to make any opening comments, and then I'll have the folks at the table introduce
24 themselves. We're glad to have representatives from the state, Park and Planning, and
25 the Department of Environmental Protection here today, and I'll give them a chance to
26 make some opening comments, and then we'll dig into the packet. Mr. Orlin.

27
28 GLENN ORLIN:

29 Very briefly, again, when -- Mr. Andrews, you asked that we set this up about a week ago,
30 I asked the staffs to come, and what I've asked them to do -- Dan Hardy, I think, and Rob
31 Shreeve from State Highway are going to take the lead -- but just talk for about 10
32 minutes about the process they've been using the last year and a half, two years, on
33 environmental mitigation, and then, as you said, leave it open to questions from you all.
34 So with that, maybe just if you can go down the table from closest to farthest, just
35 introduce yourself and your agency, and then start with Dan once you've introduced
36 yourself.

37
38 KEITH VAN NESS:

39 My name is Keith Van Ness, and I'm with the Montgomery County Department of
40 Environmental Protection.



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1 DAN HARDY:

2 I'm Dan Hardy, with the Montgomery County Planning Department.

4 ANDREA STONE:

5 Andrea Stone, Montgomery County Planning Department.

7 MARK ETHERIDGE:

8 I'm Mark Etheridge with the Montgomery County Department of Permitting Services/

10 ROBERT SHREEVE:

11 I'm Robert Shreeve. I'm the Environmental Manager for State Highway for the ICC.

13 COUNCIL PRESIDENT ANDREWS:

14 All right. Thank you all for being here, and we appreciate it. It's important to have
15 representation from all the agencies, and glad you could all attend on fairly short notice.
16 Appreciate it. All right. Well, would anyone like to make an opening comment?

18 DAN HARDY:

19 Sure. I'd be happy to just kick things off a little bit. As you know, we've been working with
20 the State Highway Administration, with the Executive Branch agencies, with the Board,
21 and the Council on the ICC in its latest incarnation since about 2003. During the planning
22 phase for the project, which was 2003-2006, the state set up what they called an
23 interagency working group, which involves state, federal, local agencies. There were a
24 number -- I think we had eight Planning Board work sessions, a couple at which we took
25 testimony for big decision points to reach a recommendation for the state in terms of
26 picking a preferred alternative. That was in 2005. The state selected an alternative, and
27 there was a Record of Decision issued by the Federal Highway Administration in 2006.
28 We then, in July of 2006, held a mandatory referral -- in name, just like every other
29 mandatory referral we process, but obviously with a, you know, almost \$2 billion project in
30 Montgomery County, some in Prince George's County, this was a little bit larger than your
31 typical mandatory referral. One thing that made this mandatory referral unique was that
32 the state is pursuing design/build for the highway mainline, and there are about 70
33 environmental stewardship projects that are part of the ICC project that are across the
34 ICC study area. So we therefore have essentially continued our mandatory referral
35 reviews during the past two to two and half years, and as you noted, we've have about 17
36 status reports. These are scheduled essentially as needed, typically a month to 6-8 weeks
37 apart, as issues come up that we want to bring the board and the public a status report or
38 get some particular pieces of guidance. As it turns out, the last one that we did have,
39 status report number 17, was a very timely one to talk to you all about because it did have
40 to do with some lessons learned in the Upper Rock Creek Special Protection Area and
41 how the agencies all involved want to take those lessons and apply them to the Upper

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1 Paint Branch Special Protection Area, where the state is now getting ready to get into
2 detailed design. We are continuing, therefore, our work with the interagency working
3 group, so the relationship that we have as the stewards of the parks and environmental
4 resources is linked with the Corps of Engineers, the DNR, MDE, and so forth at the state
5 and federal level. We also are working on design reviews, because at the mandatory
6 referral stage, they had roughly 40% highway design completion, which is typical for
7 mandatory referral review stages, but yet things are changing. As the design- builders get
8 the design, we are actually, at the staff level, working on part of the state's project team to
9 get comments back as an agency to the State Highway Administration for the design-build
10 process. As I mentioned, again, with the 70 stewardship mitigation projects, about half of
11 those are in our parkland, and so we're working both on the details -- Those will be --
12 we've had a couple of them work through our process already. One wetlands project has
13 already been completed near the Boys' and Girls' Club next to the Trolley Museum. And
14 on those, they will have separate mandatory referrals, because those are going through
15 the design-build process. They are separate independent contracts, and we go have to
16 work with the state to make sure that all of the rules and regulations that the state has to
17 build those things jive with our rules and regulations for managing the parkland. I'll just
18 mention that we have, you know, probably about 20 people at Park and Planning involved
19 in some role or another. Andrea Stone is our primary Planning Department staff person,
20 and she works nearly fulltime on the ICC. Most of the other folks are just brought in for a
21 couple hours here or there, as aesthetics, noise, legal, road redesign issues come about,
22 so we also have with us today Mark Pfefferle, our Acting Chief of Environmental Planning,
23 and Mitra Pedoeem, the Chief of Construction in our Parks Development Division, if you
24 have any questions for them. And with that, I think I'd be happy to answer any questions
25 you have. I think Rob Shreeve might want to take a few minutes to talk about the state's
26 role.

27
28 COUNCIL PRESIDENT ANDREWS:
29 Go ahead.

30
31 ROBERT SHREEVE:

32 Thank you. I'm Rob Shreeve. Currently -- I'll just give you sort of a brief status update on
33 all of the construction as it goes. Contract A, which is the western third of the project, is
34 about 35% complete. Design is essentially done, with a few mop-up items to be taken
35 care of. Contract B, which is the middle third, is just getting underway. They're maybe 2%
36 along. And Contract C, which is the eastern third, is about 24% along. One of the things
37 that we have strived for on the ICC all along, and one of our most cherished
38 commitments, is our avoidance, further avoidance and minimization. Currently, we have
39 reduced impacts to parklands by about three-quarters of an acre. About 25 acres' worth of
40 forest impacts have been reduced, and of that, about seven acres of FIDS -- forest interior
41 dwelling species, bird habitat. Right-of-way has been narrowed by about 145 acres.

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1 Wetland impacts have been reduced by about 19 acres, and streams have been reduced
2 by about 1,200 linear feet. We do have a four-plus acre wetland site that was created over
3 by the Trolley Museum that is functioning well, providing a lot of good water quality
4 benefits and habitat. We are currently under construction in one of our Paint Branch SPA
5 BMP projects, which is retrofitting neighborhood ditches that were concrete lined, asphalt
6 lined, and making them into bio trenches. That project is about a third complete, and we
7 expect to be completing it this spring. And we have just advertised -- or actually, we've
8 just given notice to proceed to the contractor to do some reforestation on DNR's property
9 in Seneca State Park for about 25 acres of reforestation. We expect to advertise the
10 Olney Manor Dog Park this March, to have construction begin sometime this summer.
11 And I'll be glad to answer any other specific -- you know, general questions or whatever
12 you'd like.

13
14 COUNCIL PRESIDENT ANDREWS:

15 OK. All right. Well, the packet -- on circle 11-- I'm sorry, circle 12 of the packet, under the
16 Status of Planning Board Recommendations for Environmental Protection Measures in
17 the Upper Rock Creek Special Protection Area, and I want to go back to a statement that
18 was made by Dan Hardy that -- he indicated that some specific lessons have learned from
19 the Upper Rock Creek Special Protection Area that will be applied to the Upper Paint
20 Branch Special Protection Area, and I want to get into exactly what those are in just a
21 minute, or in a little bit. But in the middle of the page, in circle 12, it says that, and this is in
22 the memorandum from Andrea Stone and Candy Bunnag to the Planning Board, "Of the
23 12 comments that were endorsed by the Planning Board at the February 21, 2008 public
24 hearing, three of the comments have been fully met. The remaining comments are still
25 either under discussion and coordination or will not be met because they exceed the
26 commitments made by State Highway Administration in the ICC Record of Decision." And
27 then it says, "The following section contains a detailed review of each of the 12
28 comments." One of the major comments, certainly, major concerns about the Upper Rock
29 Creek Special Protection Area, and I'm sure it's true for the -- and I know it's true for the
30 Upper Paint Branch Special Protection Area -- is, with the impervious caps that you have,
31 I know in the Upper Paint Branch Area, those have all been adhered to. There's an 8%
32 impervious cap for the Upper Paint Branch Special Protection Area, and for projects that
33 have been -- prior to the ICC, all the projects that have gone through that I'm aware of,
34 through local, state, and federal government projects -- the Spencerville Post Office,
35 which is a federal project, the Briggs Chaney Road/Old Columbia Pike Intersection, which
36 is a state project, and the Fairland Community Center, which is local, all -- in all cases, the
37 applicant initially took a position that they couldn't comply with 8%. Ultimately, they did,
38 after understanding why it was so important to maintain that 8% impervious cap. So the
39 question is, what is the state's intention regarding complying with the 8% impervious cap
40 in the Upper Paint Branch Special Protection Area, given the highly sensitive environment
41 that that area represents and the roughly 33 -- well, let's see. It's, uh... It looks like -- I



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1 know there are 33 acres of proposed impervious surface in the Upper Rock Creek Special
2 Protection Area. I assume it's fairly similar in the Upper Paint Branch Special Protection
3 Area. So what is the state going to do, because I remember them saying it was going to
4 adhere to, if not the letter of the County law, which it's exempt from, the spirit of the
5 County law, which is to ensure that this Special Protection Area is specially protected. So I
6 will -- I'll first turn to our state representative, Mr. Shreeve, about that.

7
8 ROBERT SHREEVE:

9 As we committed to all along on this project, the ICC project will take a fair amount of
10 stormwater management on the western edge, over by Maryland 650, of the SP -- Upper
11 Paint Branch SPA stormwater management and will redirect that stormwater to receiving
12 waters in Northwest Branch. The stormwater management plan for the highway itself
13 takes that water to the main stem of Upper Paint Branch, treating it with sand filters and all
14 that. The -- we will -- we have a lot of projects focused -- mitigation projects and
15 stewardship projects which are above and beyond that are focused on treating water
16 quality in the Upper Paint Branch SPA. Many of them are the SPA BMP projects that take
17 neighborhood ditches and retrofit them to bio-trenches. We'll be retrofitting some
18 communities that were developed without any stormwater management with state-of-the-
19 art stormwater management, and we also have quite a bit of land that will be -- that's
20 already purchased in the Upper Paint Branch SPA that will be turned over to the -- to
21 Montgomery County Maryland-National, to preserve it and keep it from becoming
22 impervious. One of the premier sites, I guess, is the Peach Orchard/Alnutt property, which
23 will also not only prevent a housing development from going in, but also create
24 approximately 30 acres of wetlands, do about 50 acres of reforestation, and several
25 thousand linear feet of stream restoration.

26
27 COUNCIL PRESIDENT ANDREWS:

28 Let me ask each of the representatives from the different -- from the three environmental
29 representatives, in effect, since your primary job is managing the environmental impacts
30 for the state, correct, of the Intercounty Connector?

31
32 ROB SHREEVE:

33 Yes.

34
35 COUNCIL PRESIDENT ANDREWS:

36 And we have our Department of Environmental Protection here from the County and Park
37 and Planning's lead person on this, and I'll ask each of them, do you think that what is
38 now planned in terms of mitigation for the Upper Paint Branch Special Protection Area will
39 be satis -- adequate to maintain the current excellent water quality that we have in that
40 Special Protection Area? And I'll start with Park and Planning and just go across the table.



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1 DAN HARDY:

2 Well, let me jump in and start off by saying that as worked through the mandatory referral
3 process, one thing we recognized is we needed to create a process to look at what would
4 be a water quality review plan in the County's process. So we did work with Chairman
5 Hanson and SHA Administrator Neil Pedersen about two years ago to set up what this
6 process would be -- again, recognizing that at the time of mandatory referral, we didn't
7 have information necessary or sufficient to really review water quality concerns. We've
8 kind of broadened that out into saying we are not doing a water quality plan review, but we
9 are doing an environmental review. This spring, we conducted that for the Upper Rock
10 Creek SPA, and that's what you see referenced in our status report number 17. We are
11 gearing up. Working with the state on their schedule, probably late this summer or
12 perhaps early this fall we would be doing the same thing for the Upper Paint Branch. So
13 part of it is that we do need to participate in the design process with the state to go from
14 the 30% design to whatever their new -- whatever their design-builder will propose, and
15 they've just gotten full notice to proceed for Contract B in the Upper Paint Branch SPA. So
16 some of that is yet to be determined. Some of the lessons learned, though, that we did
17 find from Upper Rock Creek are that we did set up a process in the Upper Rock Creek
18 SPA where we got the local agencies talking with the state. We are interested in making
19 sure that the Maryland Department of Environment is participating at a greater level of
20 detail early on in the process -- kind of a collaborative design -- and there are some things
21 we need to work out with SHA and MDE on that. The local agencies are in the process
22 now of putting together a letter to the secretary of MDE requesting their more active
23 participation before they get to the go/no-go rubber-stamp process later on this summer.
24 That's one thing that we found. A second thing we found was that it very much helps to
25 have design completed before -- again, from a local perspective, we can't -- the law says
26 you can't have any clearing or grading, any land-disturbing activities, before the
27 environmental review or water quality plan has been approved. We had some challenges
28 in Upper Rock Creek getting those schedules to mesh. What we are working with the
29 state on now, they've actually put it in their requirements for the Contract B contract, is to
30 say that no land-disturbing activities would occur before the Planning Board had its public
31 hearing on the Upper Paint Branch environmental review. Although, in another week,
32 we're going to be going back with a public hearing on an exception to that because there
33 is a piece of the roadway, as Rob mentioned -- the New Hampshire Avenue interchange
34 itself ultimately will drain west into the Northwest Branch watershed. The design-builder
35 recognizes that's a very complex interchange, and they are proposing to do clearing and
36 grading as part of the design-build process this spring to avoid some environmental
37 calendar restrictions. We're supportive of that, but again, we need to now take that issue
38 by itself as a small, standalone public hearing to the Planning Board that's the scheduled
39 for the 19th of February?

40
41 ANDREA STONE:



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1 Yes.

3 DAN HARDY:

4 19th of February. Next week. And we will still be looking at the impacts of that design in
5 the overall Upper Paint Branch environmental review, to be scheduled later on this
6 summer. I think that, finally, the issue here is that in that agreement, the goal that
7 Chairman Hanson and Administrator Pedersen agreed to was that the goal here was to
8 make sure that we have the best possible design that meets the objectives of the local
9 and state water quality protection laws. But we recognize that there is Record of Decision
10 that the state is bound to follow. We are still working with state and federal agencies in an
11 interagency working group, and so it is not our expectation that each of the local
12 processes will be followed, and this is part of -- doesn't mean that we don't necessarily still
13 ask for that in some of our reviews. I think the last lesson learned, perhaps, is that we did
14 recognize -- I think we got, basically got a bridge lengthened in the Upper Rock Creek
15 SPA through that collaborative process that we -- Everybody says, "Hey, we came out of
16 that process with a better design on one eastern tributary of the north branch of Rock
17 Creek than what was in the Record of Decision." So again, we're always in this kind of
18 position of saying we recognize what's in the Record of Decision. That means we
19 shouldn't say we can't bring items to the table that are not part of the Record of Decision.
20 At the same time, we have to respect the fact that the state may have reasons to say, "No,
21 it's above and beyond our requirements."

23 COUNCIL PRESIDENT ANDREWS:

24 And all that, I'm not -- I don't dispute that, but my question remains, whether what is
25 proposed is adequate to ensure that you don't have degradation of the water quality in the
26 Special Protection Area, and let me ask Miss Stone about her view on that, because she's
27 been working on this for a while now. And I'm trying to understand if, regardless of the
28 intentions of the state and all the different projects that are underway, what's -- the bottom
29 line is what I'm concerned about in terms of what the impact will be on water quality, and
30 in terms of this specific question, in the Special Protection Area of the Upper Paint
31 Branch. And so I'll ask Miss Stone, and then I'll go down the line. Are you confident that
32 the state's current plan will prevent degradation of the water quality in the Upper Paint
33 Branch Special Protection Area?

35 ANDREA STONE:

36 At this point, it is very early to say that in the conceptual designs. We have seen their
37 designs, and I do believe that they are trying to mitigate within the requirements that they
38 have already set in their contract, what with the diversion of flow to the Northwest Branch
39 and with the conceptual plans that we've seen of the linear filters and the three stages of
40 stormwater quality management, that they are going to be treating for the water quality in
41 terms of what kind of pollutants will be filtered out before discharging and in the channel

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1 protection volume, as well. It's quite difficult, with the linear nature of the project and the
2 restrictions within the right-of-way and the limits of disturbance. They have two separate
3 water quality monitoring programs -- one during construction, where they will be
4 monitoring for their erosion and sediment control upstream and downstream, and they
5 also have the baseline water quality monitoring that they have been doing since the
6 beginning of the project, since the FEIS was issued. And as Rob said, they also have
7 many environmental stewardship projects throughout the watershed. The goals are all
8 there to maintain the water quality of Upper Paint Branch, and we are going to work with
9 them as best as we can to make sure that those goals are attained. At this point, it's very
10 difficult to give you a conclusive answer of, "Yes, I believe that it is," or, "No." We need to
11 go through the process.

12
13 COUNCIL PRESIDENT ANDREWS:

14 How much longer will the process be going on before irrevocable decisions are made?

15
16 ANDREA STONE:

17 I think that they are set for completion of design in September, or submittal of designs to
18 MDE in September, so we are going to be doing our environmental review in June or July
19 before we -- before they have gotten to a point where changes can't -- can no longer be
20 made.

21
22 COUNCIL PRESIDENT ANDREWS:

23 Let me turn to your two colleagues as well and ask the same question about their
24 assessment of whether what is currently planned will prevent the degradation of the water
25 quality in the Upper Paint Branch Special Protection Area.

26
27 MARK ETHERIDGE:

28 Sure. You mentioned irrevocable changes. That's sort of the nature of the design-build
29 process, unfortunately. That's one thing we found with the Upper Rock Creek review, was
30 that, you know, by the time we get the designs, they are at a certain stage of development
31 that is very difficult for us to have any significant amount of influence on changing. There
32 are significant changes that we would like to see. It's very difficult to get those changes
33 put in place. There's timelines, there's, you know, all kinds of factors that go into making it
34 very difficult for us to really make those things occur, so it limits our ability -- it limits the
35 impact that our comments have when we're doing our environmental reviews.

36
37 COUNCIL PRESIDENT ANDREWS:

38 What could the state do, if it chose, to make that better?

39
40 MARK ETHERIDGE:



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1 You know, we talked about that real early on in the process. With the design-build process
2 and trying to make that work in a way that's consistent with the Special Protection Area
3 approach -- I mean, it's very difficult. We originated the Special Protection Area approach
4 sort of in opposition to the design-build type of approach, where we have a system or set
5 or requirements that's followed and very little preliminary discussion with the local
6 jurisdictional review agencies. There is no preliminary discussion with DPS before the
7 design is -- the bid is awarded on the design. So it makes it very difficult.

8
9 COUNCIL PRESIDENT ANDREWS:

10 It does seem -- that seems like a big problem.

11
12 MARK ETHERIDGE:

13 Yeah. So one thing that we had asked, and we learned with the Upper Rock Creek
14 review, was that since MDE is the ultimate approval authority -- and by nature of being
15 MDE, they have sort of minimum requirements that they require for stormwater
16 management, and we have a little bit higher level of requirement. We'd like to have a little
17 bit earlier involvement with MDE during the review process so they can be aware of our
18 concerns and maybe help steer some of those comments to the right end. That wasn't
19 always possible in the Upper Rock Creek review by the time we were speaking to the
20 reviewers. Things were so far along, it was very difficult to make any changes.

21
22 COUNCIL PRESIDENT ANDREWS:

23 Well, there's not much time left...

24
25 MARK ETHERIDGE:

26 No.

27
28 COUNCIL PRESIDENT ANDREWS:

29 ...to get it right on the Upper Paint Branch Special Protection Area, as you -- based on the
30 schedule you just outlined. Let me turn again to Mr. Shreeve and ask whether he's
31 confident that the measures are adequate to protection the degradation of water in the
32 Upper Paint Branch Special Protection Area and also what, if anything, can be done to
33 address the concern you just heard about the -- what I hear the County saying, DEP,
34 inability to have much impact on how the highway is designed under the current approach.
35 But first, do you think it's going to -- how confident are you that's going to happen?

36
37 ROBERT SHREEVE:

38 I'm with you so far.

39
40 COUNCIL PRESIDENT ANDREWS:

41 OK.

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1 ROBERT SHREEVE:

2 I think that water quality will be protected in the Upper Paint Branch, both through the
3 state-of-the-arts stormwater and water quality treatment facilities on the highway itself and
4 by the mitigation and stewardship projects that are within the watershed, as well. The
5 watershed is suffering from what I'll say is death by a thousand pinpricks. Those
6 stewardship projects are the method of removing some of those pinpricks. To speak to --

7
8 COUNCIL PRESIDENT ANDREWS:

9 Wait. Let me stop you there because I don't want the impression to be left that building the
10 ICC is good for the environment. You're not saying that, are you?

11
12 ROBERT SHREEVE:

13 No, but I'm saying that building the ICC is -- the ICC is being built to the highest standards
14 that anyone has right to expect.

15
16 COUNCIL PRESIDENT ANDREWS:

17 Well, that's probably debatable, but... That's what we're debating. All right. I'm going to
18 turn to my colleagues for a little while. I'll come back a little bit later. First Council Vice
19 President Berliner, and then Councilmember Elrich has his light on, too.

20
21 COUNCIL VICE PRESIDENT BERLINER:

22 One, let us thank you, Council President, with respect to scheduling this. This is an
23 important conversation. It's one that I had urged that last time we had this, to make sure
24 that our County officials advised us if and when there was a disagreement -- a respectful
25 disagreement or otherwise -- with respect to the state's processes, so it is very incumbent
26 upon you to bring to our attention those matters in which we have a disagreement with
27 respect to how the state is proceeding. I want to go back to the page that was cited by the
28 Council President with respect to the packet before us, which identified that only three of
29 the 12 items that are at issue were solved -- were resolved satisfactorily. But with the
30 greatest respect, Dr. Orlin, the combination of "still under discussion" and "beyond" -- if
31 you will let me turn to that page... I believe it's circle 12. We lumped in three categories.
32 We said the remaining comments are still either under discussion and coordination will not
33 be met because they exceed commitments made. I'd like to know the breakdown with
34 respect to, of those nine, how many are still under discussion, and how many "will not be
35 met because they exceed commitments"? And of those, I need you to identify what the
36 most important ones are in terms of protecting, particularly in the Upper Paint Branch, our
37 water quality there. And I'll just observe, as I know my colleagues, particularly on the T&E
38 Committee appreciate, we just got a report -- and this isn't something you would
39 necessarily be aware of. And I apologize -- your name, from the state, again?

40
41 ROBERT SHREEVE:



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1 Rob Shreeve.

2
3 COUNCIL VICE PRESIDENT BERLINER:

4 ...that you wouldn't be aware of, but we just had a briefing from our County officials with
5 respect to what's going on in Clarksburg, in our part of the world here. And our experience
6 in Clarksburg is that we underestimated, quite frankly, what the impact was going to be on
7 our water quality of significant construction activity, and particularly, we have fragile areas
8 up there that are suffering. And our water quality is degrading, and it is degrading even
9 having used the "best management practices," and we're finding, in some instances, our
10 best management practices aren't good enough. And so it is in that context that many of
11 us are concerned that we really need to be very careful, and we need you to be that kind
12 of environmental steward that you suggest you will be if we are going to ensure that this
13 incredible resource is not degraded, because it's just far too important for that. So I would
14 like to give our County folks an opportunity to share with us, if you will, if you had to
15 identify, for purposes of this conversation, the top three issues -- because some of us on
16 this side of the dais, we can only hold three issues at one time. But the top three issues
17 that we have not resolved yet that need to be resolved to the satisfaction of our County. I
18 would appreciate your counsel with respect to that. So I'll open it up to whomever.

19
20 KEITH VAN NESS:

21 I don't know this will make the top three , but...

22
23 COUNCIL PRESIDENT ANDREWS:

24 Go ahead and introduce yourself. Introduce yourself one more time.

25
26 COUNCIL VICE PRESIDENT BERLINER:

27 We could start with the top three.

28
29 KEITH VAN NESS:

30 My name is Keith Van Ness, and I work with Department of Environmental Protection. I
31 guess the question of whether what was proposed would be adequate to ensure no
32 degradation -- whether we thought the matters were enough, and I would turn it around
33 and say we really should be able to provide you all -- the public -- that information so you
34 can make that decision, and that's where the monitoring comes in. So we, all of us, work
35 from the same field, and for me, we have good, during construction, monitoring. The
36 baseline monitoring -- I work with their consultants on that, but in a Special Protection
37 Area, there's a different level of monitoring that needs to be done that's not being done for
38 the ICC.

39
40 COUNCIL VICE PRESIDENT BERLINER:

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1 OK, and let's stay with that, if you don't mind, Mr. Council President. What level of
2 monitoring is, A, being promised? What level of monitoring, in your judgment, needs to be
3 done? And then I'll turn to the state to say is this unreasonable for the County to expect
4 this, given this precious resource?

5
6 KEITH VAN NESS:

7 In a Special Protection Area, a developer, a private developer, would propose that their
8 development would meet performance goals, protect water temperature. It would protect
9 nutrient loadings to stream. They would design a monitoring program that would
10 demonstrate how that was met. The ICC has document out called "The ICC and the
11 County Special Protection Areas" in which all 13 performance goals -- I'm sorry, 10 -- are
12 proposed to be met. And so all we're asking is, show us how well they were met.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Let me return to our state representative and say, is that an unreasonable request, in your
16 judgment?

17
18 ROBERT SHREEVE:

19 It's not an unreasonable request. The design for the facilities that need to be monitored
20 under those 10 points is not even done yet, so we don't know what we're monitoring yet to
21 provide that to the County.

22
23 COUNCIL VICE PRESIDENT BERLINER:

24 OK. Is there a commitment to monitor it? Do I understand that the nature of your concern
25 is that there is a commitment to the outcomes, but there is not a commitment to the
26 monitoring?

27
28 KEITH VAN NESS:

29 Right.

30
31 COUNCIL VICE PRESIDENT BERLINER:

32 Are you committed to the monitoring, once you come up with your design?

33
34 ROBERT SHREEVE:

35 We monitor in accordance -- well, we monitor the streams' water quality in accordance
36 with the Maryland Biological Stream Survey, so that it goes into the state's database that's
37 held at the Department of Natural Resources and can be shared with others. Now, some
38 of the monitoring that Keith is talking about is to monitor specifically the outflows of
39 stormwater management facilities, and we will be monitoring those. Now, what method we
40 use and what the best -- what the best results are, I guess is still up for detailed
41 discussions.

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1 COUNCIL VICE PRESIDENT BERLINER:

2 So that is still something that you are open to hearing from us with respect to and whether
3 or not we can reach a mutually acceptable accommodation of what I understand to be a
4 fairly significant concern at this side?

5
6 ROBERT SHREEVE:

7 Yes, sir.

8
9 COUNCIL VICE PRESIDENT BERLINER:

10 Good. All right. What else do we have with respect to these matters? Top three.

11
12 DAN HARDY:

13 Well, I think that was actually -- comment number 12 had to do with the water quality
14 monitoring?

15
16 COUNCIL VICE PRESIDENT BERLINER:

17 Yes.

18
19 DAN HARDY:

20 I'd mentioned earlier the coordination with MDE, and I think that that's really -- you know,
21 both item 2 and item 3 really have to do with that coordination, not just what's already
22 occurring, but bringing MDE to the table as well, and --

23
24 COUNCIL VICE PRESIDENT BERLINER:

25 Can I stop you there, then? Is the state comfortable with MDE being at the table?

26
27 ROBERT SHREEVE:

28 Yes, the state is comfortable with MDE being at the table, and as I'm sure your folks will
29 tell you, MDE is invited to all of our meetings. MDE is an independent regulatory agency,
30 and therefore has its own policies, regulations, and laws that it operates under, so
31 whether it can show up, will show up, or --

32
33 COUNCIL VICE PRESIDENT BERLINER:

34 You can't determine that.

35
36 DAN HARDY:

37 I cannot do much about that.

38
39 COUNCIL VICE PRESIDENT BERLINER:

40 Then let me interrupt you for a moment and make sure I understand the nature of what it
41 is that we're asking MDE to do and whether or not the state is in any way inhibiting that

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1 from taking place. So I hear him say, hello, MDE is welcome, has the authority, and we
2 can't say no, so --

3
4 DAN HARDY:
5 Right.

6
7 COUNCIL VICE PRESIDENT BERLINER:
8 So are we good on that one?

9
10 DAN HARDY:
11 Well, we're not good, but we're taking action on that. It's a little confusing with all these
12 state agencies -- including us, I guess -- at the table. State Highway Administration is
13 welcoming MDE to the table. What I understand the concern to be is that MDE finds
14 themselves to be a regulatory agency.

15
16 COUNCIL VICE PRESIDENT BERLINER:
17 Yes.

18
19 DAN HARDY:
20 Their job is to make a binary decision. An application comes to them, they say yes or no.
21 The concern is that by being in a collaborative process early on, they might tip their hand.

22
23 COUNCIL VICE PRESIDENT BERLINER:
24 They might prejudice --

25
26 DAN HARDY:
27 Exactly. Right.

28
29 COUNCIL VICE PRESIDENT BERLINER:
30 I've heard that from other independent regulatory bodies on certain instances, so that
31 could be the nature of the beast, and I can't fault the state with respect to that, so I think
32 it's important that that reality be understood. Yes, sir.

33
34 ROBERT SHREEVE:
35 I would add to that, though, that DPS, Maryland-National, and State Highway and our
36 design-build teams all work together. We all meet on a very regular basis -- sometimes
37 every week, sometimes every two weeks, depending on what's needed. DPS has full
38 access to a public agency like MDE and can convey their concerns directly.

39
40 COUNCIL VICE PRESIDENT BERLINER:



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1 Concerns. We can make filings before them and say, "Excuse me. This is -- this is not up
2 to snuff." But our hope would be not to do that.

3
4 ROBERT SHREEVE:

5 But MDE finds itself in the position that it regulates us by state law.

6
7 COUNCIL VICE PRESIDENT BERLINER:

8 Yes. OK. Number -- next one.

9
10 DAN HARDY:

11 Well, I think it's hard to rank a number three because I think that, you know, for example,
12 one thing that we learned at Upper Rock Creek, we talked about the bike path. That's a
13 place where the state is building the bike path across the north branch of Rock Creek. I
14 guess -- I don't know that anybody is at the table anymore that was here at the T&E
15 Committee yesterday, where we talked about our Master Plan amendment. Miss Floreen
16 was here yesterday, coming back to the table. Question there is, we had recommended
17 that the state actually construct the piece of the bike path through the Upper Rock Creek
18 SPA with a porous pavement. Frankly, we are struggling with the value of pervious
19 pavements, and we did find that they would be a good -- basically a way to start learning
20 about the maintenance issues for a bike path along a highway, which is a little bit different
21 than a bike path directly under lots of trees or a highway made of porous paving. That's
22 something that the state has said no, they are not going to do, and for better or for worse,
23 that's not something that's directly applicable to the Upper Paint Branch. So, was one of
24 our comments in Upper Rock Creek. Won't carry forward to Upper Paint Branch. A
25 second -- that was actually number 5, I believe. Comment number 11 -- no, excuse me.
26 Comment number 6 had to do with identification of the County's environmental and
27 wetland buffers, and this is something where, again, we have wider buffers that we protect
28 as a regulatory nature than the state has. This is something where we would find it to be
29 easier for our reviewers to think about the resources that we're tasked to protect if we see
30 it on their plans. I think in general it's something that the state, for the same reason, says,
31 no, their reviewers, including MDE, has to see what their lines are to protect. We've
32 managed to work, over time, with, you know -- some, we can take something from them
33 and overlay our buffers to look at it. That's one where I think that they basically said,
34 "Nope, we are not going -- we'll trade you X layers, and we can send them ours, they can
35 send us theirs, but the contract plans will not have our environmental buffers because
36 they don't mean anything to the legal aspects of the contracts that the MDE is approving
37 or that the design-builder has to follow. So there's an example of one where we've asked,
38 and they said, "No, we're not going to do it." Rob, is that a fair statement of that?

39
40 ROBERT SHREEVE:

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1 I think what we agreed to was that if you provide us with the buffer lines, then we will show
2 them on the plans. Now, MDE does not want to see those lines because they just confuse
3 issues.

4
5 COUNCIL VICE PRESIDENT BERLINER:

6 They confuse as to what the state's responsibility is with respect to this, versus the
7 County's? Why does it confuse?

8
9 ROBERT SHREEVE:

10 No. Because sometimes the line just shows up, and it takes a lot of effort to make sure all
11 the lines are clearly labeled as to what they are on all those sheets, and when they --

12
13 COUNCIL VICE PRESIDENT BERLINER:

14 Given the conversation we had the other day about the ICC and the lines, I can
15 understand the confusion, because we were totally confused by seeing so many lines
16 ourselves. It was -- it was a mess. Let me -- my hope is that...

17
18 ROBERT SHREEVE:

19 We will show the line, the buffer lines, on the sets of plans that Maryland-National will use
20 for their water quality reviews.

21
22 COUNCIL VICE PRESIDENT BERLINER:

23 Great. I guess my final observation would be, and next I want to turn to my colleagues and
24 not hog all the questioning time, and I appreciate the forbearance of my colleagues, is that
25 I understand that the Record of Decision is such that you don't have any "obligations" to
26 go beyond that, if you will -- although you seem to have been willing to do so with respect
27 to the length of the bridge. It's my understanding that the Record of Decision did not
28 require you to lengthen the bridge, but you looked at the situation with the bridge, and you
29 said, no, we need to do so. So my expectation is that to the extent to which the County
30 brings to your attention matters that go beyond the Record of Decision, that require us to
31 do more based on all what we all agree as the likely consequences if we don't, that you
32 would look favorably upon those requests. I'd be grateful for your response to that.

33
34 ROBERT SHREEVE:

35 We have been incorporating your staff's comments. We have reviewed their comments.
36 We have addressed their comments. Now, that's not to say that we've done exactly
37 everything that they've asked us to do. We do retain the prerogative to look at what is
38 feasible and prudent and what will give us the best likelihood for success on our project,
39 because ultimately we are responsible, as owners, to take the maintenance of that project.

40
41 COUNCIL VICE PRESIDENT BERLINER:



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1 OK. As long as what guides you is the best likelihood of success, I believe that that is a
2 bottom line that all of us share. To the extent to which other considerations come into it,
3 that's where we might get a little cross-threaded. But I appreciate your commitment is, in
4 fact, to the bottom line, which is, in this instance, protecting the health of these streams.

5 So with that, Council President, I --

6 COUNCIL PRESIDENT ANDREWS:

7 Thank you. Thank you. Councilmember Elrich.

8
9 COUNCILMEMBER ELRICH:

10 You're not obligated to build to our Montgomery County standards. Correct? So what's
11 feasible is your definition of what's feasible within what you all are willing to do and how
12 much money you're willing to spend.

13
14 ROBERT SHREEVE:

15 I think our Record of Decision was very clear that we are to live to the intent of the SPA
16 laws to protect water quality, if just the SPA laws are being discussed here, and we work
17 very hard to put together an environmentally sensitive project.

18
19 COUNCILMEMBER ELRICH:

20 I've got to say, I've talked to staff members who feel they have absolutely no time, or time
21 enough, to review the documents that are sent over to them and then expected to go back
22 to you. I fail to understand, since the governor is hell-bent on doing this and clearly
23 nothing will stop it, why there's any reluctance at all to design things to meet the
24 standards. I don't believe that Montgomery County is imposing strange, unusual, off-the-
25 wall standards that couldn't be achieved if somebody wanted to achieve them, and so I
26 just continue to be puzzled by the ambiguity of the state in its commitment to meet those
27 standards. I don't understand why you can't say, since we're going to do this, and since
28 we don't care what opposition there is -- we're going to do it anyway -- why the design
29 can't be done in a way that every concern, every environmental concern we have, is not
30 met, since I don't believe any of the environmental concerns we have are unreasonable.
31 And your process at the state level baffles me in that regard. I don't feel that you have a
32 commitment to actually get there. You may get there. You may not get there. I don't know
33 what "feasible" means. I don't think they're asking for anything that's not feasible, so
34 "feasible" probably comes down to how much money you're willing to spend to get a
35 certain outcome. What's your definition of feasible?

36
37 ROBERT SHREEVE:

38 It is what we feel comfortable maintaining. We have structures that will be underground in
39 the Upper Paint Branch that require maintenance. We expect them to last for 50, 75
40 years. We want them to function properly for that amount of time. We think -- we take the
41 responsibility for those facilities that we get some say in how those facilities work.



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1 COUNCILMEMBER ELRICH:

2 Are they asking you to do things that would make those facilities nonfunctional, or would
3 you have to design them in a different way?

4
5 ROBERT SHREEVE:

6 Right now, they're currently under design, but the -- it is our prerogative to make sure that
7 they work as intended.

8
9 COUNCILMEMBER ELRICH:

10 When you review the work in the first section that's been done, where we're getting our
11 lessons learned from, is everything going to come out of that OK?

12
13 MARK ETHERIDGE:

14 Well, I can tell you that there were elements of the Upper Rock Creek design that DPS
15 would not have approved that were approved by MDE that we had significant concerns
16 about that we voiced throughout the entire process. My reports to State Highway during
17 my reviews reiterated those at length, and they were not addressed. So, no, the design
18 that was ultimately approved by MDE for the Upper Rock Creek portion would not be
19 entirely approvable by DPS on SPA standards or other standards. We just had too many
20 concerns about the designs, and there was a reticence to approach the resolution. What's
21 going to happen on the SPA in the Upper Paint Branch? I don't know. I can't tell you. I
22 looked at the stormwater concept briefly. We haven't gotten into it. The particular design
23 elements that were at issue in the Upper Rock Creek have not been proposed for the
24 Paint Branch, so we may have a smoother process. I don't know. But there were
25 definitely, you should know, elements of the stormwater approach that we would not have
26 approved. We had some severe concerns about.

27
28 COUNCILMEMBER ELRICH:

29 I appreciate your candor on that. I mean, that's what concerns me, is there's no assurance
30 that we'll get where we need to be. There's -- this is not genuinely a team effort where the
31 design is meant to accommodate our standards in an attempt to fully protect the stream.
32 It's somewhere in between, and I'm concerned that it's somewhere in between. Monitoring
33 is an interesting process. So you monitor it, you discover that it's not working. What
34 happens?

35
36 KEITH VANNESS:

37 Hopefully, we would be able -- we would have been able to have looked at the Upper
38 Rock Creek and said it's not working, it's not meeting this performance goal, and report
39 back to you and to other folks. What -- the problem was that we met in April of '08 to
40 develop a monitoring plan for the Upper Rock Creek, working with Park and Planning staff
41 and State Highway, and nothing happened to make that plan -- to bring that plan into

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1 fruition. Now, you know, we don't have the regulatory authority, but we were doing this
2 collaboratively. My concern is perhaps we need to have that in place for the Upper Paint
3 Branch, and the opportunity with having the New Hampshire Avenue exchange going in
4 first might present an opportunity to get information there, report back and see how we're
5 doing.

6
7 COUNCILMEMBER ELRICH:

8 So I guess my bigger question is, suppose they put in the mitigation device or whatever,
9 and it doesn't mitigate. You know, you do your water quality assessment. Clarksburg --
10 you know, state-of-the-art, everything was going to be hunky-dory and fine...not really. So
11 we do the same thing on this road. You know, everything's great, great design -- doesn't
12 perform. So are we just left with a nonperforming road? Is anybody liable to go back in
13 and have to change this mitigation or come up with a different treatment alternative, or are
14 we just stuck, and we're going to say, "Well, that's just too bad. That's what happens to
15 the stream"?

16
17 KEITH VANNESS:

18 I think there's two options, and the one is that many of the stewardship projects that have
19 gone in for the ICC came from the County's inventory list of projects. If we can understand
20 whether they're working or not, we could be able to go in and try to make them function
21 better, but you have to know whether they're working or not. In terms of the highway, all
22 we can do is report back and say, "This is what we have found."

23
24 COUNCILMEMBER ELRICH:

25 And -- but then nobody is obligated to do anything. There's just, "This is what we've
26 found." Are you guys obligated if it doesn't work? Is there like a guarantee, like, "You sold
27 me this, and it didn't work, and now you got to go back and fix it"?

28
29 ROBERT SHREEVE:

30 Well, I will say a couple of things.

31
32 COUNCILMEMBER ELRICH:

33 I've got a fleet of buses I can give you.

34
35 ROBERT SHREEVE:

36 We've actually talked to your school system about their buses. But the.... There's two
37 things here. The state of Maryland is not a developer. The state of Maryland intends -- you
38 know, State Highway Administration intends to be around for quite a while. My past
39 experience at State Highway, which has only been a couple of decades now, has been
40 that we have gone back and retrofitted many of our stormwater facilities that were built
41 back in the late seventies, early eighties, to now come up to today's standards. There is



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1 no reason for me to believe that State Highway will not continue to monitor the facilities
2 and make sure that they're in good working operation, and when and if it needs to be
3 maintained or changed, it will be.

4
5 COUNCILMEMBER ELRICH:

6 So when I read that there are facilities that need to be extended beyond the right-of-way
7 or area of disturbance...

8
9 ANDREA STONE:

10 Our request was not for the facilities, but for the outfalls of those facilities.

11
12 COUNCILMEMBER ELRICH:

13 Yeah.

14
15 ANDREA STONE:

16 And what we would like is to make sure that the velocity of flow going to the stream is low
17 enough that there would be no erosion beyond the limit of disturbance, and what we have
18 proposed is to have an agreement between Parks and SHA that in the event that we are
19 not successful, which we are hoping would not occur, we would have some kind of a
20 Memorandum of Understanding or an agreement where Parks could extend those outfalls
21 to the bottom of the slope or the stream that they would ultimately be discharging to.

22
23 COUNCILMEMBER ELRICH:

24 Is that a Parks decision at that point? Is that a Park -- more importantly, is that a Parks
25 expense at that point?

26
27 DAN HARDY:

28 Well, I think that's what the MOA has to figure out, and I think part of it is that right now the
29 end of the outfall would be located within the limit of disturbance, you know, with the park.
30 We could go out as the Parks and say, "Let's retrofit something that creates the problem,
31 or deals with the problem, once it's on our park property." Part of the reason for the MOA
32 would be to be getting on to what would become Maryland Transportation Authority
33 property to work out a solution where the design of the facility ended. So both the cost and
34 the -- who owns the piece of equipment that might need to be changed are something
35 we'd have to work out in an MOA.

36
37 COUNCILMEMBER ELRICH:

38 I don't have a great comfort level.

39
40 DAN HARDY:



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1 Well, one other thing, I think, is it's worth -- if I recall, there's a one-year monitoring period
2 in the contracts where, you know, basically there's two concerns. One is, does the thing
3 work as advertised when you bought it. The second thing is, what happens 15, 20 years
4 from now if it's not been maintained? And those are two separate issues. I think Rob has
5 answered the second issues of what happens 15, 20 years from now. Standards have
6 changed, and best practices have changed. What I want Rob to confirm is that basically,
7 as the design-builder put something in, they are responsible, my understanding is, for a
8 year to make sure that it's doing what it's supposed to do.

9
10 COUNCILMEMBER ELRICH

11 I guess there's the thing about, you know, it's one thing if you're retrofitting things that are
12 15 and 20 years old. It's another thing if you're retrofitting something that you knew better,
13 that shouldn't have been done or should have been done differently, and I guess that's my
14 concern. I mean, I just -- it does not seem collaborative process that it should be. We have
15 standards. The fact that the state has lower standards should not be an escape valve for
16 the state to do something less than what we ask. This is a very sensitive area. It may be a
17 death by a thousand cuts, but this cut is probably bigger than all thousand put together,
18 and then some, so it's hard to, you know...It's good to say that we've done many things to
19 damage the stream, but nothing we've done to damage the stream compares to this road,
20 and to not get -- you know, do everything we can to get this right and not have a
21 commitment that we're going to design it to get it right, I just find troubling. I mean, it'll
22 come close. It'll be, you know, whatever is feasible. I'd rather hear, you know, some
23 assurances that it'll actually work and meet our standards.

24
25 COUNCIL PRESIDENT ANDREWS:

26 Thank you, Councilmember Elrich. Councilmember Floreen.

27
28 COUNCILMEMBER FLOREEN:

29 Thank you. I doubt very seriously that the construction of the ICC, no matter how
30 environmentally sensitively it's designed, is going to satisfy people who don't support it, so
31 let's agree about that. I wanted to thank all the staff here who've been working hard on
32 this. When it was approved years ago, we asked you to do this, to work together, have
33 these arguments, to sort out these issues, to spend countless hours on working as hard
34 as you could to mitigate the impacts on the environment, and you need to know that we
35 really appreciate it. We know it's not easy, that there's always going to be a challenge to
36 sort out, but we appreciate how hard you've worked, and I appreciate that there have
37 been 17 updates on this, because the Council wanted to be engaged and aware of all
38 your hard work. So I wanted to say that. I wanted to point out, for those of you who
39 weren't able to be at the T&E meeting on Clarksburg, one of the challenges out there in
40 terms of water quality -- and I see Rick Brush is in the audience -- is the fact that there are
41 other factors that have caused some of the water quality issues out there, not the least of

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1 which -- according to the report we saw, at least -- had to do with the delay in completely
2 construction. So they've been living with temporary stream water management structures
3 for way longer than anybody wanted them to have to live with because of the finalization
4 of the project has -- had been put off. That delayed the implementation of the really good
5 structures, and of course we've asked them to look at ways to make sure that doesn't
6 happen again. But there were many factors, some of which were not under -- weren't
7 obvious, I guess, at the time that were going to create that environmental problem. I just
8 wanted to comment, we're going to do this all over again in two weeks, because we took
9 up yesterday the issue of the bike path along the ICC. And I will simply observe at this
10 point in time what we've discovered, and what the full Council will talk about, no doubt,
11 when we have the work session, is the issue of the tradeoffs of all the different pieces
12 here. Where do you have to have a trail? Can it be on the edge of the roadway? The issue
13 of the right-of-way, where the state has reduced it in a number of places to minimize
14 impact on parkland and sensitive areas, has also reduced options for other kinds of things
15 that the community has asked for. And so this is one of the tradeoffs that you've got to
16 worry about and sort through, and we'll see where the full Council ends up with the
17 committee recommendation, which was unanimous in terms of all the different parts of the
18 bike trail that we'd like to see added to the ICC over time. We respect the fact that the
19 state is doing part of that. It's not doing as much of it as the Council had hoped that they
20 would be able to produce, but that's because the state's been trying to address the
21 environmental issues at the same time. So we appreciate there's -- there are many, many
22 -- there are a variety of tradeoffs that the full Council will have to sort through in two
23 weeks. None of them are easy, and the challenge is satisfying a variety of objectives at
24 the same time, which is always our problem. So I just wanted to mention that for the
25 record, Mr. President. I'm sure the Council will be very interested in getting into this again,
26 from a somewhat different but related perspective, and we'll have some more information
27 about some of the definitions that reflect the judgment calls that really have been worked
28 out amongst these players here that affect what may be possible or how we might choose
29 to go about addressing the access of the community to this resource in the county. So
30 we'll -- we'll be back again.

31
32 COUNCIL PRESIDENT ANDREWS:

33 OK. Thank you. I have a couple short questions. I'm going to turn to Councilmember
34 Trachtenberg, and then I may have a concluding comment. But we received a packet -- I
35 think all Councilmembers have gotten this -- from Connie McKenna, the subject of with is
36 Mill Creek at Polara Drive, which is right next to part of the ICC, and she had a couple of
37 questions that I thought were important ones to ask, and one is, are tests on area
38 groundwater occurring for chemicals, or just for sediment? Who would like to answer that?

39
40 ROBERT SHREEVE:

41 On groundwater?



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1 COUNCIL PRESIDENT ANDREWS:

2 Yeah.

3
4 ROBERT SHREEVE:

5 We monitor -- we do monitor the streams upstream and downstream of the project so that
6 we can look at the pH, turbidity, temperature, uh... and the depth of the water as it's
7 coming through the project so we know what our effects are. There are groundwater
8 monitoring wells in at various wetland areas, especially at those wetlands that, I guess, we
9 refer to as remnant wetlands, where a piece of them have been impacted, but not the
10 whole wetland has been impacted, so we want to verify that those wetlands are going to
11 remain viable once we're done.

12
13 COUNCIL PRESIDENT ANDREWS:

14 We've spent a lot of time focusing on the Special Protection Area, and there's a very good
15 reason for that, but, of course, the ICC traverses a lot of area that isn't in a Special
16 Protection Area, and people are concerned about its impact on those areas, as well, so
17 the other question is, what level of monitoring is occurring regarding the ICC's
18 environmental impact where there isn't an SPA, isn't a Special Protection Area or county
19 parkland, and who is monitoring that impact? I'll turn to our county Department of
20 Environmental Protection first.

21
22 KEITH VANNESS:

23 Well, speaking for the Department of Environmental Protection, we have a monitoring
24 program that we go out each year, and we'll monitor areas of the county. This year, we
25 will be monitoring that area so we can get independent assessment of stream impacts in
26 Mill Creek and other parts of the Upper Paint -- Upper Rock Creek, outside of the Special
27 Protection Area, and we're doing that with the intention of being able to share that
28 information freely. Tomorrow we meet with the consultant for SHA to coordinate our
29 monitoring in -- along the entire length of the ICC. So I know that they are doing stream
30 monitoring, as well. And perhaps Rob could speak more to that.

31
32 COUNCIL PRESIDENT ANDREWS:

33 Thank you. OK. Please.

34
35 ROBERT SHREEVE:

36 As far as the monitoring of the environmental aspects of the project go, I think any of your
37 Maryland-National staff can probably attest there's a beehive full of folks watching. On
38 State Highway's side, we have environmental design reviewers who review the plans as
39 they're being designed and make sure that all of the commitments that we've made for
40 environmental issues have been addressed. Then once the plans have been approved to
41 go out to construction, we have environmental construction inspectors that work for State

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1 Highway. They're only job is to inspect the project from an environmental standpoint. They
2 look for ways to minimize impacts to trees that are along the very edge of the
3 construction. We then also have an erosion sediment control quality-assurance inspector
4 who inspects each of the contracts once a week and gives them a rating and makes sure
5 that they're in line. We have what's called the independent environmental monitor, who's
6 actually the eyes and ears of the MDE and the Corps of Engineers and reports on a daily
7 basis to them. We also have the MDE compliance inspector, who shows up about once a
8 week, if not more often, depending on how often we need him, and we have the Corps of
9 Engineers compliance folks who show up. We take the interagency working group, of
10 which Maryland-National and the county's Executive department are part of, on a tour of
11 the project from one end to the other every month. If they want to go, we're available to
12 go. And we also have Maryland-National's ecological monitor -- is that what we're calling
13 Cornelia? -- who comes out on site. She's welcome to come out on site. She usually
14 checks in with one of our environmental inspectors and rides the project.

15
16 COUNCIL PRESIDENT ANDREWS:

17 OK. So what I hear is there are a lot of people out there at various times. The underlying
18 issue is, what standards are maintained and achieved to ensure that are held to? You
19 know, that is ultimately the bottom line, and with that, I'm going to turn over now to
20 Councilmember Trachtenberg, and I might have a concluding comment. Councilmember
21 Trachtenberg.

22
23 COUNCILMEMBER TRACHTENBERG:

24 Thank you, Council President Andrews. I want to also thank you for putting the discussion
25 together this afternoon, which has been useful, but, you know, I am a skeptic, and while I
26 appreciate the hard work and also the responses this afternoon, I'm a skeptic about
27 environmental impact. But I'm also very much a skeptic about environmental impact on
28 health and well-being, which I think is an issue here at hand that we've not really been
29 able to focus on adequately. There was a discussion back October, I believe, of 2007 with
30 some state officials. There were some very specific questions raised around health and
31 well-being, around the root of the ICC, the proximity to the project, and specifically health
32 impact to both children and seniors. At the time, I was astonished to find out that we did
33 not have any full-time staff on a state level who were addressing public health implications
34 of the project. There was some general statement made about securing some contractual
35 assistance in that regard, and I think most of us know, here in the room this afternoon,
36 that as the years have gone on and by, even after this project was first looked at over 20
37 years ago, there's compelling evidence -- research shows that proximity to major road
38 construction does have impact on respiratory function, and that in some cases, it does
39 cause impairment. And again, that's specifically true for children and seniors. So with that
40 in mind, one of the things that had happened after that October 2007 discussion here in
41 the Council was that there was a letter sent by a few of us to the state with a series of



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1 questions. There was a particular category of questions around public health -- if I'm not
2 mistaken, a good 12 or 14 questions. It is my understanding that we still have not received
3 an adequate response to any of those questions. So with that in mind, what I'd like us to
4 do -- I don't have the memo in front of me, although I do have it down on my desk. What
5 I'd like us to consider doing, at least some of my colleagues joining me in doing, is that I'd
6 like to send a letter back to the state with those exact same questions, because I think it's
7 really time to have this conversation, and I would ask Council President to consider
8 convening a Board of Health discussion on this very topic. I think it's long overdue, and if
9 we're going to talk about impact on the environment, that means on people, too.

10
11 COUNCIL PRESIDENT ANDREWS:

12 Thank you for those comments, and we will have a Board of Health discussion that will
13 include a discussion of the public health impacts of proximity to highways. There was a
14 study done by a researcher whose last name is Gauderman that was published in The
15 Lancet a couple years ago that -- it was based on a multi-year, I think it was a 14-16 year,
16 study of children in Los Angeles, and it tracked the children from the time they were 6 or 8
17 to the time they were 18, and it found that proximity to highways with high-speed truck
18 traffic resulted in a permanent impairment of lung function. It damaged lungs in terms of
19 capacity. That definitely has implications for how governments should look about where
20 they site, at least, certain housing developments in proximity to highways. We focused
21 most of this discussion today on water quality, but air quality is crucial as well, and I will
22 say that I was extremely disappointed that the state did not include any adequate
23 surrogate monitoring of what the impacts of the Intercounty Connector would be on people
24 who live within a third of a mile, half a mile, quarter mile of the highway. The state used a
25 surrogate monitor that's 1.5 miles from I-95 and extrapolated from that, which is just not --
26 no reasonable person, I think, would conclude. And it was a subject in the court suit. The
27 judge clearly wasn't pleased with how the state approached that, but the state was not
28 required to do it. Federal law was so weak in that area, they weren't required to provide an
29 effective surrogate in terms of monitoring the impact of pollution on people who live close
30 by, and there are many people who live within a third of a mile of the ICC, and while we
31 need to... So I am very interested in how the Council -- having the Council look at what
32 are the implications for future policy regarding where we would site housing developments
33 in relation to highways that have been demonstrated in other areas to produce those
34 harmful effects to children -- permanently harmful effects to their lung development. And
35 it's a study that can be found in The Lancet, and Gauderman was the lead researcher.
36 Very credible study -- peer-reviewed and all that. So that, to me, is why I did react when
37 Mr. Shreeve said that had been done that people had reason to expect, because I think
38 the public had reason to expect more from its government in terms of evaluating the likely
39 impacts of the ICC and factoring that into whatever decision was made. The fact is, it
40 didn't have to be done under federal law, but it should have been done, and the state
41 should have done it if it was serious about adhering to all reasonable environmental

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1 standards before. And one other aspect that we haven't touched on but I will mention has
2 been a concern of mine -- I did raise it when we met 16 months ago -- and that is the
3 impact of the ICC on vehicle miles traveled. The state's study, environmental impact
4 statement, predicted over half a billion additional miles of vehicle travel in the ICC study
5 area, which is roughly bordered by the Beltway, 270, Howard County, and a line east of
6 Gaithersburg -- predicts over a half a billion additional miles travel by 2030 annually, with
7 the ICC built. And that is going to put increasing pressure on -- on greenhouse gas
8 emissions and make it harder to achieve the state's climate-change goals in terms of
9 reducing the impact on climate change. And so, I will wrap up and say thank you to the
10 people that joined us today at the table. I think it was a productive meeting, and I hope
11 that there will be progress that comes out of it in terms of doing whatever we can
12 collaboratively to minimize what will be some negative impact, inevitably, because you
13 can't build a highway of this magnitude without some negative impact. But everything
14 should be done to minimize the impact, especially in the Special Protection Areas, which
15 we have gone out of our way to protect because they are extremely vulnerable to
16 impervious surface and to the hot runoff that comes off of it into the streams, and comes
17 off not only hotter, but faster than it would if it were running off of an impervious surface or
18 forest or something like that. So with that, I want to thank you all for coming. Appreciate it.
19 I know people had to rearrange their schedules in some cases, and thank you for doing
20 that. And the Council will reconvene at 7:30 for a public hearing tonight. Have a good day.
21